TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 609

THE BOARD OF LIQUIDATION OF THE STATE OF LOUISIANA, W. P. KELLOGG ET AL., MEMBERS OF SAID BOARD, AND THE LOUISIANA LEVEE COMPANY, APPELLANTS,

vs.

HENRY S. McCOMB.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED SEPTEMBER 25, 1875.

SUPREME COURT OF THE UNITED STATES.

No. 609.

THE BOARD OF LIQUIDATION OF THE STATE OF LOUISIANA, W. P. KELLOGG ET AL., MEMBERS OF SAID BOARD, AND THE LOUISIANA LEVEE COMPANY, APPELLANTS.

vs.

HENRY S. McCOMB.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Bill of complaint	1	1
Order restraining defendants	10	3
Marshal's return thereon	11	4
Notice of application for injunction	12	4
Return of service	13	5
Restraining order to W. P. Kellogg et al	14	5
Marshal's return thereon	16	6
Restraining order to Louisiana Levee Company	17	6
Marshal's return thereon	19	7
Subpœna in chancery to the Louisiana Levee Company	20	7
Marshal's return thereon	21	8
Subpœna in chancery to W. P. Kellogg et al	21	8
Marshal's return thereon	23	8
Demurrer of Louisiana Levee Company	23	8
Notice of said demurrer	26	9
Application for injunction continued	26	9
Submission of application for injunction and of the demurrer	26	10
Amended and supplemental bill	27	10
Order thereon	31	11
Demurrer of the Board of Liquidation	32	11
Notice of said demurrer	34	12
Demurrer set for hearing	34	12
Decree	35	13
Bond for appeal	36	13
Clerk's certificate	39	14
Citation	40	14
Assignment of errors	42	15

1 UNITED STATES OF AMERICA.

Circuit court of the United States, fifth circuit and district of Louisiana.

HENRY S. McCOMB
vs.
THE BOARD OF LIQUIDATION ET AL. } No. 7353.

Bill of complaint.—Filed March 6th, 1875.

To the honorable the judges of the circuit court of the United States for the district of Louisiana:

Henry S. McComb, of Wilmington, and a citizen of the State of Delaware, brings this his bill against William P. Kellogg, C. C. Antoine, Charles Clinton, A. Dubuclet, P. G. Deslonde, and Michael Hahn, and the Louisiana Levee Company, a corporation existing by virtue of the laws of the State of Louisiana, all of New Orleans and citizens of the State of Louisiana, and thereupon your orator complains and says he is the owner of three certain bonds for the sum of one thousand dollars each, numbered seventy-three, seventy-four, and seventy-five, all dated on
2 the 1st January, 1874, and payable on the 1st January, 1914, with seven per cent. interest, payable semi-annually on 1st January and 1st July of each year, on presentation of the coupons annexed to said bonds; and said bonds are of a series of bonds called consolidated bonds, issued by the State of Louisiana by virtue of the provisions of an act of the general assembly of the said State, No. 3, approved 24th January, 1874, entitled "An act to provide for pending obligations of the State by exchanging for bonds," &c.; and said three bonds are signed by William P. Kellogg, governor, and Charles Clinton, auditor of public accounts, and P. G. Deslonde, secretary of state, and sealed with the seal of the State of Louisiana, which said bonds will in due time be produced as Exhibits A, B, & C, to be filed with and in support of this bill.

Your orator further avers that by virtue of the provisions of said funding act, approved 24th January, 1874, a board of liquidation was created, composed of the governor, lieutenant-governor, auditor of public accounts, treasurer, secretary of state, and the speaker of the house of representatives of the State of Louisiana, and the said board
3 is authorized to exchange the bonds, the issue of which is authorized by said act, for "all valid outstanding bonds of the State and all valid warrants drawn previous to the passage of this act by the respective auditors of public accounts of the State on the treasurer thereof, except warrants issued by the auditor in payment of the constitutional officers of the State, at the rate of sixty cents in consolidated bonds for one dollar in outstanding bonds, and all valid warrants;" and said act, in section (5) five, provided that the bonds to be issued should be used for no other purposes than as are authorized by said act; and said act, in section (11) eleven, further enacted that "each provision of this act shall be, and is hereby declared to be, a contract between the State of Louisiana and each and every holder of the bonds issued under this act."

Your orator further avers that by a constitutional amendment adopted by the people of the State of Louisiana at the general election held on the first Monday of November, 1874, it is provided that the issue

of the consolidated bonds authorized by the said funding act of 1874 is declared to create a valid contract between the State of Louisiana and each and every holder of said bonds, which the said State shall by no means and in no wise impair.

That in consequence of these statutary and constitutional provisions the State of Louisiana has deprived itself of the right to issue any bonds except consolidated bonds, for the purpose of exchanging the same for the valid outstanding bonds of the State, and all valid warrants drawn previous to the passage of said funding act, and could not thereafter create or acknowledge any debt or obligation for which the bonds of the State can be issued.

Your orator further avers that notwithstanding these restrictions, and in violation of the rights vested in your orator and others, holders of the said consolidated bonds, the general assembly of the State of Louisiana has, at its session in 1875, passed an act entitled "An act prescribing the manner of ascertaining the amount due the Louisiana Levee Company from the State on the first day of October, 1873, and to provide for funding said debt;" that certain persons therein named are authorized by said act to ascertain the entire amount due the Louisiana Levee Company from the State for work done up to the first day of October, 1873, and, after deducting payments made on account thereof, to report the exact balance due on 1st October, 1873, and on presentation of said report of such indebtedness, duly certified, as prescribed in said act, to the board of liquidation aforesaid, created by said act No. 3 of the session of 1874, it is made the duty of said board to issue and deliver to the president of said levee company a sufficient number of the consolidated bonds of the State to cover the indebtedness of the State to said company, at the par value.

Your orator further avers that the passage of said act of 1875 is a gross violation of the contract with the holders of bonds issued under the funding act of 1874 aforesaid, and the constitution of the State of Louisiana, and of the United States, as the contract made by the funding act aforesaid expressly limited the amount of the consolidated bonds to be issued to a sum sufficient to take up on the terms proposed in the said act, viz, at sixty cents on the dollar, the bonds of the State and the auditor's warrants outstanding at the time of the date of the passage of the act, except warrants for salaries of the constitutional officers of the State.

Your orator further avers that the State of Louisiana is in no manner indebted to the said levee company; that the said State never agreed to pay to, nor did it ever become under obligation to pay to the said levee company, any sum of money for work done by it or for services rendered by it to the State; that in consideration of services to be performed by the said levee company, as specified in the act of the general assembly of the State of Louisiana approved 20th February, 1871, the State agreed to levy and collect annually a certain tax, the proceeds of which, when collected, were to be paid to the said levee company, and the State has complied with its engagement, and levied the said tax, and if any of the officers of the State have wrongfully withheld from the levee company any portion of the taxes collected by them, the State is not responsible to the levee company for the unauthorized conduct of its officers, and the State cannot create or recognize a debt and cause the same to be funded under the provisions of the funding law in violation of that law and of the constitution of the State.

Your orator further avers that the said W. P. Kellogg, who is the gov-

ernor, C. C. Antonie, who is the lieutenant-governor, Charles Clinton, who is the auditor of public accounts, Antoine Dubuclet, who is the treasurer, P. G. Deslonde, who is the secretary of state, and Michael Hahn, who is the speaker of the house of representatives of the State of Louisiana, now compose the board of liquidation created by and in virtue of the said funding act approved 24th January, 1874, and are acting in the said capacity and are funding the bonds and warrants of the State and issuing consolidated bonds therefor, and if not re-
8 strained therefrom will, under the provisions of said act passed 2d March, 1875, issue to the said Louisiana Levee Company consolidated bonds of the State of Louisiana to a large amount, say in some amount over the sum of fifty thousand dollars, by which your orator will be greatly injured, his bonds be depreciated in value in a sum exceeding two thousand dollars, and will become almost, if not entirely, worthless.

Wherefore your orator prays that a writ of injunction issue, and that the said W. P. Kellogg, C. C. Antoine, Charles Clinton, A. Dubuclet, P. G. Deslonde, and Michael Hahn, the said board of liquidation, be forever enjoined from funding under the provisions of the said act No. , passed 2d March, 1875, or under the provisions of the said act approved 20th February, 1871, or any of its amendments, any debt or claim in favor of the said Louisiana Levee Company against the State of Louisiana, and be also enjoined from issuing any consolidated or other bonds of the State of Louisiana to the said levee company, under and
9 in virtue of the provisions of said act passed 2d March, 1875, or under the provisions of the said act approved 20th February, 1871, and that the said Louisiana Levee Company be enjoined from receiving any consolidated or other bonds from the said board of liquidation, or any of the members thereof, issued under the provisions of the said act passed 2d March, 1875, or the act approved 20th February, 1871, or any of its amendments, and that the writ of subpœna be issued commanding and directing the said defendants to appear and make answer hereto, if any they can, and that the said act of the general assembly of the State of Louisiana passed March 2d, 1875, be declared unconstitutional, null, and void, and that the injunction herein granted may be maintained, enforced, and made perpetual, and for such other and further relief and remedy as the nature of the case may require and equity grant.

(Signed) SEMMES & MOTT, *Sols.*

Personally appeared Robert Mott, who, being sworn, says he is
10 a member of the firm of Semmes and Mott; that said firm are the solicitors of Henry S. McComb; that the facts and averments of the foregoing bill in chancery are true to the best of *defendant's* knowledge and belief.

(Signed) ROBERT MOTT.

Sworn to and subscribed before me this 4th day of March, 1875.

(Signed) W. B. WOODS,
U. S. Circuit Judge.

Order.

AT CHAMBERS,
Pensacola, Florida, March 4th, 1875.

This day the foregoing bill in equity was presented to and read by me, and evidence satisfactory to me was produced that a notice had

been served on the defendants that a motion for an injunction as prayed for in the bill would be made before the undersigned on this day at this place.

Thereupon it is ordered by me that said bill be filed, and that the hearing of said motion be continued, and that the same be set down for hearing at the U. S. court-room in the city of New Orleans, in the
11 State of Louisiana, on Monday, March 15 inst., at 11 o'clock a. m., and that a restraining order at once issue, to be served on the defendants, restraining them and each of them, as prayed for in the bill, until the said 15th March, and until the further order of the court, or a judge thereof.

Ordered that a copy of this decretal order be served on the defendant at the same time that the restraining order is served on them.

Witness my hand the day and year first aforesaid.

(Signed) W. B. WOODS,
United States Circuit Judge for the District of Louisiana.

Marshal's return.

Received March 8th, 1875, by the U. S. marshal, and on the same day I served copies of the within order as follows: Upon Wm. P. Kellogg, by handing the same to him personally in his office, in the capitol building in this city; upon C. C. Antoine, by handing a copy to him personally; upon Charles Clinton, by handing a copy to him personally; upon A. Dubuclet, by handing a copy to him personally; upon P. G. Des-
12 londe, by handing a copy to him personally; and upon Michael Hahn, by handing a copy to him personally.

(Signed) J. B. STOCKTON,
Dep'y U. S. Marshal.

NEW ORLEANS, *March 8th*, 1875.

And on same day I served a copy of the within order upon the Louisiana Levee Company by handing the same to John Henderson, the president of said company, in person, in his office, 37 Camp street, New Orleans, La.

(Signed) J. B. STOCKTON,
Dy. U. S. Marshal.

Notice of application for injunction.—Filed March 6th, 1875.

U. S. cir. ct., dist. of Louisiana. In equity.

HENRY S. MCCOMB
vs.
BOARD OF LIQUIDATION ET AL.

To his excellency Gov. William P. Kellogg, president of the board of liquidation created under the funding act, No. 3, of 1874, and the Louisiana Levee Company:

Please take notice that on the 4th day of March, 1875, at 10 o'clock a. m., or any subsequent hour when the judge will hear the same,
13 we shall apply to the Hon. W. B. Woods, U. S. circuit judge, at Pensacola, Florida, for an injunction to restrain the Board of Liquidation above named from issuing any consolidated bonds to the Louisiana Levee Company, under or by virtue of the provisions of an

act passed 2d March, 1875, by the general assembly of the State of Louisiana, entitled "An act prescribing the manner of ascertaining the amount due the Louisiana Levee Company by the State, and to provide for funding said debt."

(Signed) SEMMES & MOTT,
Sols. of H. S. McComb.

Return.

Personally appeared Charles Carroll, who, after being duly sworn, deposes and says that the foregoing is a true and correct copy of a notice served by him this day, at about 2½ p. m., on Hon. W. P. Kellogg, president of the board of liquidation created, &c., in person & that the foregoing is also a true and & correct copy of a notice served by him on the Louisiana Levee Company by handing said notice to M. A. Tarleton, esq., secretary and treasurer of said La. Levee Company, at about ten minutes after two o'clock p. m., at the office of said company, this day.

(Signed) CHARLES CARROLL.

14 Sworn to and subscribed before me this 3rd day of March, 1875.

[SEAL.] (Signed) ROBERT J. KERR,
United States Commissioner for the District of Louisiana.

Restraining order.—Issued March 6th, 1875.

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth judicial circuit, and district of Louisiana.

HENRY S. McCOMB
vs.
THE BOARD OF LIQUIDATION ET AL. } No. 7353.

The President of the United States to William P. Kellogg, C. C. Antoine, Charles Clinton, A. Dubuclet, P. G. Deslonde, and Michael Hahn, composing the board of liquidation of the State of Louisiana, under the provisions of the act of the general assembly of the State of Louisiana approved 24th January, 1874, greeting:

Whereas it has been represented unto us, in our said circuit court, on the part of Henry S. McComb, in a bill in equity lately exhibited against you, and each of you, and against the Louisiana Levee
15 Company, a corporation existing by virtue of the laws of the State of Louisiana, touching certain matters and things in said bill set forth;

And whereas the honorable W. B. Woods, one of the judges of our said court, upon due consideration thereof, has made and allowed in said cause an order restraining you, and each of you, agreeably to the prayer of the said bill, copy of which order accompanies this restraining order:

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said William P. Kellogg, C. C. Antoine, Charles Clinton, A. Dubuclet, P. G. Deslonde, and Michael Hahn, composing the said board of liquidation of the State of Louisiana, and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, from funding under the provisions of the act No. , passed 2d March, 1875, or under the provisions of the act approved 20th

February, 1871, or any of its amendments, any debt or claim in favor of the said Louisiana Levee Company against the State of Louisiana,
16 and also from issuing any consolidated or other bonds of the State Louisiana to the said Louisiana Levee Company, under and in virtue of the provisions of said act passed 2d March, 1875, or under the provisions of the said act approved 20th February, 1871, or under any of the amendments of said last-named act.

And that you, the said William P. Kellogg, C. C. Antoine, Charles Clinton, A. Dubuclet, P. G. Deslonde, and Michael Hahn, composing the said board of liquidation of the State of Louisiana, and each of you, remain so inhibited and restrained until the further order of our said court in the premises.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 6th day of March, A. D. 1875, and of the Independence of the United States the 99th year.

[SEAL.] (Signed) F. B. VINOT,
Dy. Clerk.

Marshal's return.

Received March 8th, 1875, by the U. S. marshal, and on the same day I served copies of the within restraining order as follows: Upon
17 Wm. P. Kellogg by handing a copy to him personally in his office in the State capitol building in this city; upon C. C. Antoine by handing a copy to him personally; upon Charles Clinton by handing a copy to him personally; upon A. Dubuclet by handing a copy to him personally; upon P. G. Deslonde by handing a copy to him personally, and upon Michael Hahn by handing a copy to him personally.

(Signed) J. B. STOCKTON,
Dy. U. S. Marshal.

NEW ORLEANS, *March, 8th* 1875.

Restraining order to Louisiana Levee Co., issued March 6th, 1875.

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth judicial circuit, and district of Louisiana.

HENRY S. MCCOMB
vs.
THE BOARD OF LIQUIDATION ET AL. } No. 7353.

The President of the United States to the Louisiana Levee Company, a corporation existing by virtue of the laws of the State of Louisiana, greeting:

18 Whereas it has been represented unto us in our said circuit court, on the part of Henry S. McComb, in a bill in equity lately exhibited against you, and against William P. Kellogg, C. C. Antoine, Charles Clinton, A. Dubuclet, P. G. Deslonde, and Michael Hahn, and each of them, composing the board of liquidation of the State of Louisiana, under the provisions of the act of the general assembly of the State of Louisiana approved 24th January, 1874, touching certain matters and things in said bill set forth;

And whereas the honorable W. B. Woods, one of the judges of our

said court, upon due consideration thereof, has made and allowed in said cause an order restraining you, and each of you, agreeably to the prayer of the said bill, copy of which order accompanies this restraining order:

Now, therefore, in consideration ot the premises, and of the allegations in said bill contained, you, the said Louisiana Levee Company, are hereby commanded and strictly enjoined, under the penalty of the law, from receiving any consolidated or other bonds from the said
19 board of liquidation, or any of the members thereof, issued under the provisions of the act passed 2d March, 1875, or the act approved 20th February, 1871, or any of the amendments of said last-named act.

And that you, the said Louisiana Levee Company, remain so inhibited and restrained until the further order of our said court in the premises.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 6th day of March, A. D. 1875, and of the Independence of the United States the 99th year.

[SEAL.] (Signed) F. B. VINOT,
Deputy Clerk.

Marshal's return.

Received March 8th, 1875, by the U. S. marshal, and on the same day I served a copy of the within restraining order upon the Louisiana Levee Company by handing the same personally to John Henderson, president of said company, at his office in this city.

(Signed) J. B. STOCKTON,
Dy. U. S. Marshal.

NEW ORLEANS, *March 8th*, 1875.

20 *Subpœna in chancery to the Louisiana Levee Company, issued March 6th*, 1875.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon the Louisiana Levee Company, a corporation existing by virtue of the laws of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday in April, 1875, then and there to answer a bill in chancery filed against the said company and others, wherein Henry S. McComb, a citizen of the State of Delaware, is complainant, and said Louisiana Levee Company and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, this 6th day of March,
21 in the year of our Lord one thousand eight hundred and seventy-five, and the 99th year of American Independence.

[SEAL.] (Signed) F. B. VINOT, *Dy. Clk.*

The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court on or before the first Monday of April, 1875, otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT, *Dy. Clerk.*

Marshal's return.

Received March 8th, 1875, by the U. S. marshal, and on the 12th day of March, 1875, I served a copy hereof on the Louisiana Levee Company by handing the same to John Henderson, the president of said company, in person, in this city.

New Orleans, March 15th, 1875.

(Signed) JOHN FAHY, *Dy. Marshal.*

Subpœna in chancery to W. P. Kellogg and others.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

22 You are hereby commanded to summon William P. Kellogg, C. C. Antoine, Charles Clinton, A. Dubuclet, P. G. Deslonde, and Michael Hahn, composing the board of liquidation of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of April, 1875, then and there to answer a bill in chancery filed against them, wherein Henry S. McComb, a citizen of the State of Deleware, is complainant, and said William P. Kellogg and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, this sixth day of March, in the year of our Lord one thousand eight hundred and seventy-five, and the 99th year of American Independence.

[SEAL.] (Signed) F. B. VINOT, *Dy. Clerk.*

23 The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court on or before the first Monday of April, 1875; otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT, *Dy. Clerk.*

Marshal's return.

Received March 8th, 1875, by the U. S. marshal, and on the 10th day of March, 1875, served a copy hereof on Wm. P. Kellogg, C. C. Antoine, Charles Clinton, A. Dubuclet, P. G. Deslonde, in the following manner, to wit, by handing the same to each of them in person in this city; and on the 15th day of March, 1875, served a copy hereof on Michael Hahn by handing it to him in person.

(Signed) JOHN FAHY, *Dy. Marshal.*

Demurrer of Louisiana Levee Company.—Filed March 13th, 1875.

HENRY S. MCCOMB
vs.
LOUISIANA LEVEE COMPANY & WM. P. KELLOGG et al., board of liquidation.

In the circuit court of the United States, district of Louisiana.

24 The Louisiana Levee Company, one of the defendants in the bill of the plaintiff in the cause aforesaid, now pending in the said court, not confessing or admitting the sufficiency of the said bill, or the capacity of the plaintiff to maintain the same, or his title to the relief prayed, but denying the same, does demur to the bill as wholly insuffi-

cient to sustain the claim of the said plaintiff for discovery and relief, and for special grounds of demurrer the said defendant assigns as follows:

1st. That the allegations, statements, and charges of the bill and all that the bill contains do not show sufficient matter of equity to authorize a decree for the relief prayed for in the same.

2d. That this honorable court has no authority under the Constitution and laws of the United States to entertain jurisdiction over the acts and doings of the board of liquidation described in the said bill, or to prevent or hinder the general assembly of the State to acknowledge and adjust a debt to this defendant, and that the said parties are ex-
25 empt from the jurisdiction and authority of the court in the premises.

And because the said bill is defective and the court is without jurisdiction of the subject-matter of the allegations of the same, and to grant the relief sought, the defendant prays judgment thereof, and that the same may be dismissed at the costs of the said plaintiff.

(Signed) T. GILMORE.
(Do.) J. Q. A. FELLOWS.
(Do.) J. A. CAMPBELL.

We certify that, in our opinion, this demurrer is well-founded in point of law.

(Signed) J. Q. A. FELLOWS.
(Do.) J. A. CAMPBELL.

Before me, clerk of the circuit court of the United States aforesaid, personally came John Henderson, president of the Louisiana Levee Company, the defendant aforesaid, who maketh oath and saith that this demurrer is not interposed for delay.

(Signed) JOHN HENDERSON,
President of the Louisiana Levee Company.

Sworn to and subscribed before me this 13th March, 1875.

(Signed) F. B. VINOT,
U. S. Commr.

26 *Entry in chancery order-book.*

March rules, 1875.—Saturday, March 13th, 1875.

HENRY S. MCCOMB
vs.
THE BOARD OF LIQUIDATION ET AL. } No. 7353.

The Louisiana Levee Company, one of the defendants herein, have this day filed their demurrer to the complainant's bill.

Continuance of application for injunction.—Extract from minutes, November term, 1874.

NEW ORLEANS, *Monday, March 15th,* 1875.

Court met pursuant to adjournment.
Present, Hon. W. B. Woods, circuit judge.

HENRY S. MCCOMB
vs.
BOARD OF LIQUIDATION & AL. } No. 7353.

By consent of counsel the application for an injunction herein pending is continued till to-morrow at 11 a. m.

Submission of application for injunction and of the demurrer.—Extract from minutes, March 16th, 1875.

HENRY S. MCCOMB
vs.
27 THE BOARD OF LIQUIDATION ET AL. } No. 7353.

The complainant's application for an injunction, and the demurrer filed by the defendants, came on to be heard—Semmes and Mott for complainants, J. A. Campbell, T. Gilmore, and J. Q. A. Fellows for defendants—when, after hearing the pleadings and argument, the court took time to advise.

Amended and supplemental bill.—Filed March 25th, 1875.

To the honorable the judges of the circuit court of the United States for the district of Louisiana:

Henry S. McComb files this amended and supplemental bill against Wm. P. Kellogg, C. C. Antoine, A. Dubuclet, P. G. Deslonde, Charles Clinton, and Michael Hahn, the members of the board of liquidation, and the Louisiana Levee Company, to be added to the original bill of complaint after the last averment, and before the prayer thereof; and your orator avers—

That the amount of bonds known as consolidated bonds issued by the said board of liquidation under and in virtue of the provisions of
28 the said act of the general assembly of the State of Louisiana approved 24th January, 1874, up to the present time, is about two millions two hundred thousand dollars, all of which are guaranteed by the said constitutional amendment adopted at the general election held in the State of Louisiana in November, 1874, to be contracts between the holders thereof and the State of Louisiana; that no bonds shall be issued by said board, or by the said State, except for the purpose of funding the then debt of said State as evidenced by the bonds and valid auditor's warrants issued before the passage of said act approved 24th January, 1874.

Your orator avers that by a constitutional amendment adopted at the general election held in the State of Louisiana in November, 1870, and promulgated in December, 1870, the amount of the debt of the State of Louisiana was fixed at twenty-five millions of dollars, and it was declared that the same should never exceed that sum, and at the time of the passage of said act approved 24th January, 1874, the debt of
29 said State, composed of outstanding bonds and auditor's warrants, exclusive of warrants issued for the salaries of constitutional officers, amounted to the said sum of twenty-five millions of dollars, to which the same was restricted by the aforesaid constitutional amendment.

Your orator avers that the persons to whom by the said act of the general assembly of the State of Louisiana, passed March, 1875, was given the power and authority to ascertain the amount that was claimed to be due the Louisiana Levee Company by the State on the 1st October, 1873, and to report the amount to be funded by the said board of liquidation, have made a report in compliance with the terms of said act, and sets forth therein the amount of such ascertained indebtedness to be funded by said board to be the sum one million seven hundred thousand dollars, or thereabouts, as your orator is informed and believes, and if said board of liquidation be not restrained from so doing by the

order of this honorable court, the consolidated bonds of the State of Louisiana will be issued by said board of liquidation, under the
30 authority of and according to the terms of the said act passed March, 1875, to the said Louisiana Levee Company, to the full amount of said report, in violation of the rights of your orator, and to his manifest injury and to the injury of the holders of the consolidated bonds of the State of Louisiana, and to the injury of the holders of the valid bonds and auditor's warrants of said State issued before the 24th January, 1874.

Your orator avers that the amount of the debt of the State of Louisiana having been fixed and limited to the sum of twenty-five millions of dollars by the said constitutional amendment of 1870 aforesaid, the said funding act and the said constitutional amendment of 1874 were enacted and adopted with the object and intent of reducing the debt of the State forty per cent., to the fixed sum of fifteen millions of dollars, to be evidenced by consolidated bonds bearing seven per centum interest per annum, and beyond which said last-named amount the said State of Louisiana could not create or acknowledge any indebtedness whatever; and that no bonds should be made or issued by or on the part of the said State except for the then indebtedness of the
31 State, limited as aforesaid to the said sum of twenty-five millions of dollars.

Your orator further avers that the issue of bonds by the said board of liquidation to the said Louisiana Levee Company would be violation of the said funding act and of the said constitutional amendment and the vested rights of your orator, and would appropriate one million seven hundred thousand dollars of the fifteen millions intended to be reserved for the funding of the debt of the State, which, fixed at and limited to twenty-five millions of dollars, as aforesaid, would thus cause a deficit of one million seven hundred thousand dollars of the said consolidated bonds, and leave unfunded the sum of one million seven hundredred thousand dollars of the debt of the State, fixed, as aforesaid, at twenty-five millions of dollars.

(Signed) SEMMES & MOTT,
Solictors.

Order.

Let this amended and supplemental bill be filed.
New Orleans, March 25th, 1875.
(Signed) W. B. WOODS, *Judge.*

32 *Demurrer of the Board of Liquidation.—Filed April 3rd, 1875.*

HENRY S. McCOMB
vs.
LOUISIANA LEVEE CO., WM. P. KELLOGG, ET al., The Board of Liquidation. } In chancery.

In the circuit court of the United States, district of Louisiana.

The Board of Liquidation, one of the defendants, joining the Louisiana Levee Company, the other defendant, in the bill of the plaintiff in the cause aforesaid, now pending in the said court, not confessing or admitting the sufficiency of the said bill, or the capacity of the plaintiff to maintain the same, does demur to the bill as wholly insufficient

to sustain the claim of the said plaintiff for discovery and relief, and for special grounds of demurrer the said defendants assigns as follows:

1st. That the allegations, statements, and charges of the bill and all that the bill contains do not show sufficient matter of equity to authorize a decree for the relief prayed for in the same.

2d. That this honorable court has no authority under the Con-
33 stitution and laws of the United States to entertain jurisdiction over the acts and doings of The Board of Liquidation, described in said bill, or to prevent or hinder the general assembly of the State to acknowledge and adjust a debt of this defendant The Louisiana Levee Company, and that the said parties are exempt from the jurisdiction and authority of the court in the premises.

And because the said bill is defective, and the court is without jurisdiction of the subject-matter of the allegation of the same and to grant the relief sought, this defendant joins in the prayer of the codefendant and prays judgment thereof, and that the same may be dismissed at the costs of said plaintiff.

(Signed) J. Q. A. FELLOWS.

We certify that, in our opinion, this demurrer is well-founded in point of law.

(Signed) J. Q. A. FELLOWS.

Personally appeared before the undersigned a member of The Board of Liquidation, one of the defendants herein, who maketh oath and
34 saith that this demurrer is not interposed for delay.

(Signed) C. C. ANTOINE.

Sworn to and subscribed before me this 3rd day of April, 1875.

(Signed) F. B. VINOT,
U. S. Commissioner.

Entry in chancery order-book.—April rules, 1875.

SATURDAY, *April 3rd*, 1875.

HENRY S. MCCOMB
vs.
LOUISIANA LEVEE COMPANY ET AL. } No. 7353.

C. C. Antoine, one of the members of The Board of Liquidation, defendants herein, has this day filed his demurrer to complainant's bill of complaints.

Entry in chancery order-book.—Demurrer set for hearing.

WEDNESDAY, *April 7th*, 1875.

HENRY S. MCCOMB
vs.
THE BOARD OF LIQUIDATION ET AL.

The complainant, by his solicitors, Semmes and Mott, sets for hearing the demurrers filed in this case.

35 *Decree—filed April 21st, 1875—and extract from the minutes, and order allowing appeal.*

H. S. McComb
vs.
Louisiana Levee Company, Board of Liquidation. } No. 7353.

This cause came on to be heard upon the bill, amended bill, the demurrers of the respective defendants thereto, and was argued by counsel in the presence of the court.

And thereupon, on consideration of the same, the demurrers are overruled and the bill sustained. And thereupon, the defendants declining to answer or to make other defence to the said bill—

It is ordered and decreed that the injunction prayed for be allowed and made perpetual, and that the defendants be enjoined and restrained according to the prayer of the bill, and that the defendants pay the costs of this suit.

And the said defendants, in open court, pray for an appeal to the
36 next term of the Supreme Court of the United States, to be held in Washington City at the time prescribed by law, which appeal is allowed on the defendants' giving bond and security in the sum of three thousand dollars, conditioned according to law.

(Signed) W. B. WOODS, *Judge.*

Bond for appeal.—Filed May 4th, 1875.

United States of America:

Know all men by these presents that we, The Board of Liquidation created by the act of the State of Louisiana, No. 3, approved on the 24th January, 1874, and The Louisiana Levee Company, as principal, and John Henderson as surety, are held and firmly bound, jointly and severally, unto Henry S. McComb in the sum of three thousand dollars, lawful money of the United States of America, to be paid to the said Henry S. McComb, his heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and ad-
37 ministrators, firmly by these presents, sealed with our seals, and dated the 30th day of April, in the year of our Lord eighteen hundred and seventy-five.

Whereas The Board of Liquidation and Louisiana Levee Company, by the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, been allowed an appeal from its final decree rendered on the day of April, 1874, to the honorable the Supreme Court of the United States, in the cause wherein Henry S. McComb is complainant and The Board of Liquidation and Louisiana Levee Company are defendants in said circuit court, No. 7353:

Now the condition of the above obligation is, that we, the above bounden Board of Liquidation and Louisiana Levee Company, will prosecute their appeal, and will well and truly pay and satisfy such judg-

ment as may be rendered against them on the appeal; otherwise that the said John Henderson, surety, shall be liable in their place.

(Signed) BOARD OF LIQUIDATION,
By C. C. ANTOINE. [L. S.]

(Signed) LOUISIANA LEVEE COMPANY,
38 By JOHN HENDERSON. [L. S.]

(Signed) JOHN HENDERSON. [L. S.]

Approved.

(Signed) W. B. WOODS,
U. S. Circuit Judge.

39 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit, and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit, and district of Louisiana, do hereby certify that the foregoing 38 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on trial of the case of Henry S. McComb versus The Board of Liquidation et al., No. 7353 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 17th day of August, A. D. 1875.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, W. B. Woods, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit, and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 17th day of August, A. D. 1875.

W. B. WOODS,
Judge.

40 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Henry S. McComb, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a petition & order for appeal, of record & filed in the clerk's office of the circuit court of the United States for the fifth circuit, and district of Louisiana, wherein William P. Kellogg, C. C. Antoine, Charles Clinton, A. Dubuclet, P. G. Deslonde, and Michael Hahn, composing the Board of Liquidation of the State of Louisiana, and the Louisiana Levee Company, a corporation existing by virtue of the laws of the State of Louisiana, are defendants & appellants, and you are complainant and appellee, to show cause, if any there be, why the judgment rendered against the said appellants, as in said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 6th day of May, in the year of our Lord one thousand eight hundred and seventy-five.

W. B. WOODS, *Judge.*

41 (Indorsed:) United States circuit court. No. 7353. Henry S. McComb vs. The Board of Liquidation et al. Citation.

Received May 6, 1875, by the U. S. marshal, and on the 10th day of May, 1875, served a copy hereof on Henry S. McComb, within-named complainant & appellee, by handing it to Thomas J. Semmes, of the law-firm of Semmes & Mott, attorneys for said McComb, in person.

S. W. REED,
Dy. U. S. Marshal.

S. W. Reed.

S. W. Reed, sworn, says: I am a deputy U. S. marshal for the district of Louisiana, and made service of the within citation as stated in my return.

S. W. REED,
Dy. U. S. Marshal.

Sworn to and subscribed before me this 20th May, 1875.

F. B. VINOT,
Commr. of U. S. Circuit Court, Dist. of Louisiana.

42 Supreme Court of the United States of America, October term, 1875.

HENRY S. MCCOMB, APPELLEE,
vs.
BOARD OF LIQUIDATION, LOUISIANA LEVEE COMPANY, ET AL., APPELLANTS.

The appellants aforesaid, by their attorney, come & aver that in the record & proceedings, and in the final decree in the said cause in the circuit court of the United States for the district of Louisiana aforesaid, there are errors, to the damage of the appellants:

1. The court erred in overruling the demurrer of the appellants to the bill of the appellee, and the appellants re-affirm the matter of the said demurrer and the assignments of errors of demurrer as a bar to the prayer for relief contained in the bill.

2. The appellants aver that, under the statutes of the general assembly of the State of Louisiana, the Louisiana Levee Company is a creditor of the State, & that the State agreed to a specific settlement with the company by a legislative enactment, & that this settlement is impeached in this bill, and is prohibited by this decree. The appellants aver that the plaintiff has not shown such an interest in the subject-matter to authorize him in the circuit court aforesaid to impeach the act of the general assembly. 2nd. That the bill does not show such a cause as to entitle the court to grant the injunction allowed by the circuit court in this cause. 3rd. That the circuit court had not jurisdiction of the subject-matter, or over the Board of Liquidation, the subject being the fiscal arrangements of the State with its creditor by & through the agency of its executive officers. The appellants pray judgment of the decree, & that it be reversed, with costs to be paid by plaintiff.

J. A. CAMPBELL,
Atto. for Appts.

(Indorsement on cover:) No. 609. The Board of Liquidation of the State of Louisiana, W. P. Kellogg et al., members of said board, and The Louisiana Levee Company, appellants, v. Henry S. McComb. Louisiana C. C., U. S. Filed 25 September, 1875.

In the Supreme Court of U. S.

BOARD OF LIQUIDATION, ET AL., APPELLANTS,

vs.

HENRY S. McCOMB, APPELLEE.

Appeal from a Decree of the Circuit Court of the U. S. District of Louisiana.

STATEMENT OF THE PLEADINGS.

JOHN A. CAMPBELL,
Attorney for Appellants.

Murphy & Co., Printers & Stationers, 182 Baltimore street, Baltimore.

In the Supreme Court of the U. S.

BOARD OF LIQUIDATION, ET AL., APPELLANTS,

vs.

HENRY S. McCOMB, APPELLEE.

Appeal from a Decree of the Circuit Court of the U. S. District of Louisiana.

STATEMENT OF THE PLEADINGS.

I.

The pleadings consist of a bill filed by the appellee in the Circuit Court of the United States, for the district aforesaid, against the appellants, a demurrer on the part of the appellants, defendants in the bill, a decree overruling the demurrer, and the appellants declining to answer, a final decree according to the prayer of the bill.

All of the questions to be considered arise from the allegations of the bill and the prayer for relief, and the decree conforming to the prayer of the bill.

II.

The bill charges that the appellee holds three bonds of the State of Louisiana for $1000 each, with coupons for semi-annual interest of $35 each, dated January 1, 1874, and the interest to be paid the 1st January and July of each year for 40 years.

The bonds are of the issue of consolidated bonds of Louisiana. No default is charged. Nor is there any complaint of any disturbance of possession or of the validity of the bonds.

His complaint is that the State of Louisiana, by an Act of the General Assembly, had recognized a debt to the Louisiana Levee Company, and had appointed a committee of the Legislature to ascertain the amount due, and that the board of liquidation should satisfy it by delivering to the company "consolidated bonds" of the State of the same issue as those held by the appellee. Thereupon the appellee was panic stricken lest he should lose two thousand dollars in the deterioration of these three bonds by this great outrage on constitution and law. The extravagance of his apprehensions is shown in the fact that the market value of his three bonds is only $1620. So that his statement is analogous to some experiments that are shown upon cork, in which that article seems to lose more of weight than it had ever had. The claim of the appellee to maintain the suit, rests upon the opinion that an Act of the General Assembly, approved in January, 1874, called the funding act, and an amendment to the Constitution of the State, adopted in 1874, conferred on the holders of any of the issue of consolidated bonds a capacity to injoin the board of liquidation from issuing to the Levee Company and the Levee Company from accepting consolidated bonds, in payment of the debt which the General Assembly had recognized, and the payment of which it had prescribed in this mode.

The defendants denied the correctness of this opinion by a demurrer to the bill for want of equity and for want of jurisdiction in the Court over the subject and parties, and assign the overruling of the demurrer as an error of the Circuit Court.

III.

The claim of the appellee as the holder of three bonds of the State, about which there is no contest, in the payment of in-

terest no default, and whose title or control of them is undisputed, to preclude the General Assembly of the State from acknowledging a debt as due; and being a debt, to pay it with bonds of one issue or of another issue, is submitted for inquiry as to its value. The basis, the bill informs us, is derived from the funding act No. 3, Acts 1874, pages 39, 40, and the constitutional amendment of that year, adopted in November, 1874. We have appended to this brief the constitutional amendment, and the funding act.

The title of the funding act is voluminous. The constitution of Louisiana requires the *objects* to appear in the title. The title of the funding act is, "To provide for funding the obligations of the State by exchange of bonds; to provide for principal and interest of said bonds; to establish a board of liquidation, etc." The first section of the act declares the "purpose of consolidating and reducing the floating and bonded debt of the State," and enacts, that the Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer and Speaker of the House of Representatives should prepare and issue, to the amount of $15,000,000 (if needed), of State bonds, to be known as "Consolidated bonds of the State of Louisiana." The bonds were to be of various sums, and uniform as to date, time of payment and rate of interest. The public officers were to decide as to the number of bonds necessary to reduce the floating and bonded debt.

The terms "obligations of the State of Louisiana" in the title of the Act, and the terms "floating and bonded debt" in the first section, as the thing to be *consolidated* and *reduced*, plainly indicate that the entire indebtedness of the State and the mode of its settlement engaged the attention of the General Assembly. The 13th section of the same Act strengthens this conclusion by the positive declaration that, "The intent and object of this Act and of the changes to be effected thereunder, to reduce and restrict the whole indebtedness of the State to a sum not exceeding $15,000,000.

IV.

The general plan for the consolidation and reduction of the public debt of the State, by the issue and exchange of new bonds for old is developed, in part, in the sections of the Funding Act which follow.—A Board of Liquidation composed of the officers of the Board to issue bonds, and a fiscal agent appointed by the officers composing that Board to prepare and issue the bonds, is to be organized to consolidate the debt and to make the exchanges the Funding Act provides for. The third section of the Funding Act directs this last-mentioned Board—the Board of Liquidation—to exchange "consolidated bonds" "*for all outstanding bonds of the State and all valid warrants*" drawn before the passage of the Act by the auditors of public accounts and the treasurer, at the rate of sixty cents in consolidated bonds for one dollar in outstanding bonds and valid warrants.

We pass by the enactments in relation to the proof of the claims of the bond creditors and the penalties against those who disregard the terms of the Act, and proceed to the question whether the General Assembly or the State are debarred by these terms from a control of those bonds described in the 3d section of the funding act, or from giving directions or instructions to the board of liquidation in respect to such bonds as remain in their possession. This section empowers the board to make exchanges of consolidated bonds for other bonds, or for warrants, on terms exactly defined and which the board cannot alter. The board is a fiscal agency, appointed by the State, with limited powers, and may be changed or abolished at the will of the General Assembly. Nothing in the third or any previous section warrants the conclusion that this board is a permanent body, or institution of the State for any period independent of the legislative control.

The 4th and 6th sections are not material to this discussion. The 5th section determines the powers of the board, and with the third ascertains all it has to perform.

The board is to make no disposition of the bonds for any other purpose than of exchange for the forms of debt before mentioned. Should the board or its members attempt to use them, or, in fact, use them or induce others to use them for any other purpose, it subjects them to prosecution and ignominious punishment upon conviction. The section is framed, for the purpose of securing fidelity from the members of the board in the fulfilment of their obligations under the act.

The 7th, 8th, 9th and 10th Articles contain a description of the security offered for the payment of the consolidated bonds and the interest. These sections relate to the manner of assessing, collecting and disposing of the taxes to be imposed for this purpose. The 11th section declares "that each provision of the act shall be a contract between the State of Louisiana and every holder of the bonds issued under this act. This section is the corner-stone on which the bill rests.

The 12th section repeals all grants of the State of State aid, whether of bonds, indorsements, subscriptions of stock, or otherwise, which have become lapsed or forfeited, without power to renew or to extend them. The 13th section declares that the *entire State debt*, prior to A. D. 1914, shall not be increased beyond the $15,000,000 hereby authorized, "it being the intent and object of this act and of the exchanges to be effected under it, to reduce and restrict the *whole indebtedness of the State* to a sum not to exceed $15,000,000, and to *agree with the holders of the bonds to be hereunder issued, that the debt shall not be increased* beyond said sum during said period. The remainder of the act is employed about other details.

The guarantees to the bondholder consist in the pledge of a specific tax for the payment of the principal and interest under the 7th, 10th, 14th and 16th sections, and of modes of collection and appropriation. 2. That the debt shall not be increased. 3. That the purpose to reduce the debt should be persistently pursued until the debt should be reduced to $15,000,000.

IV.

The result of the examination we have made of the funding act is, that in 1874 a scheme was framed for the consolidation and reduction of the State debt. The legislative history shows that State bonds had been prodigally and wastefully issued.

State aid had been promised in the form of bonds and guarantees to railroads, steamboat, warehouse, canal, navigation companies, and for all sort of enterprises. Warrants, many grossly fraudulent, were in circulation. No more debts could be legally contracted, and the State bonds were a drug in the market.

To accomplish this reduction and consolidation a beginning had to be made. A board of liquidation was appointed, with authority to deal with the debt represented by bonds and warrants. The funding act is not authoritative to the creditors. No one creditor can be required to accept it. It is an offer, an overture. Bonds were prepared and certain securities for the collection and appropriation of money to pay principal and interest accompanied the making of the bonds. What these securities are we have stated. Specific taxes to be laid, collected and appropriated during the whole term, with solemn promises of economy and retrenchment. This is the contract contemplated in the eleventh section. Nothing in the act requires the State to repudiate the floating debt. Neither does it give to any creditor the right to superintend the operations of the State in its various settlements, or in the selection of the persons to be dealt with. This (appellee) has made his settlement, and there his interest in the use of this issue of bonds terminated. He has no legal interest in any other of the bonds, nor title to inquire whether they are disposed of to other persons for bonds, warrants or floating debt, or for property or money. The view we take of the operation and limits of this contract is corroborated by the terms of the constitutional amendment adopted by the General Assembly in January, 1874, and confirmed by the

popular vote in November, 1874, whereby it became an amendment to the constitution. It is No. 4 in the acts of 1875.

This amendment sanctions the issue of "consolidated bonds" as "a valid contract" of the State which the State will not impair. That it is a valid obligation to the holder, and that no court shall injoin the payment of principal or interest, or the levy and collection of the tax for that purpose, but that the judicial power may be exercised to secure the collection and the payment; and that the *Treasurer* should pay the taxes over to the bondholders without more legislation. Here is a statement of the terms of the contract which the State sanctioned.

It is a striking commentary upon the unscrupulous action of the Courts in enjoining the collection of taxes specially appropriated, and the injunction of the payment of money appropriated upon the flimsiest pretexts, to the damage of the holders of State bonds. A suit by the Attorney General, or his assistants or supernumeraries, against the Auditor, to restrain him from paying bonds or interest in the absence of the holders, is one of the novelties of Louisiana practice.

The second and third articles of this amendment, provide for the reduction of the public debt, that appropriations shall be confined to current revenues and shall be null if they exceed them.

The constitutional amendment does not embrace in the contract with the bondholder that the board of liquidation shall be a permanent institution and shall have no other duties than those conferred in the funding act. Nor that the consolidated bonds shall be exclusively used for the reduction of the State debts represented by bonds and warrants; or that there shall be a repudiation of the floating debt, or that it shall be deferred for forty years. Such measures would have been idle and mischievous. Suppose a bondholder or warrant holder should decline to accept the terms of this act. Suppose the holder of the bonds issued before the year 1861, at an interest of six per

cent., and which bore a premium in the first negotiation, and subsequently till 1868, should decline to be placed on the same footing with the holders of those ten millions of bonds and endorsements issued since 1868, and which are evidence only of the corrupt, dishonest, flagitious administration of government in Louisiana since that date; suppose again, that it should be deemed expedient to withdraw this overture and to propose other forms of settlement better suited to the transaction, are the General Assembly and the people to be restrained by the holder of one or three, or a thousand bonds?

The bill assumes that this measure is a finality. That the State and the General Assembly are bound absolutely to make the settlement proposed and none other, and that the board of liquidation holds an irrevocable power of attorney, to which there can be no addition or subtraction.

That the board of liquidation represents the dominion power and fullness of the sovereignty of the State, till every line of this funding act be fulfilled *verbum post verbum.*

Our demurrer denies the accuracy of this assumption, and the pretensions founded on it.

V.]

THE TITLE OF THE APPELLANTS, AND THEIR CLAIM TO BE LET ALONE.

The complaint against the appellants originates in an Act of the General Assembly of March, 1875. Act, No. 24. Session Acts, p. 55.

The Act directs a committee of the General Assembly to ascertain the entire amount of money due the Louisiana Levee Co. by the State of Louisiana, for work done up to the 1st day of October, 1873, after deducting all of the payments, and to certify the accounts to the Governor and to the Company.

The Act proceeds to require the board of liquidation to adjust and to pay the debt by delivering to the President of the Com-

pany consolidated bonds, to pay the sum which shall be reported to be due. The Levee Company are to release to the State its claims upon the taxes which had been appropriated to pay this debt, and which had not been paid over to the Company. The appellee thinks that this is much of an outrage, a violation of the funding act, a damage to the bond and warrant holders, and a deterioration of his own little treasure of three bonds. The particular facts of which the outrage is composed, are stated to be as follows:

1. By the funding act it was stipulated that "the consolidated bonds to be issued should be of a sum sufficient to take up on the terms proposed in the act, viz.: at sixty cents on the dollar the bonds of the *State* and the Auditor's *warrants* outstanding at the time of the date of the act" and for no other purpose.

We have submitted to the court the statement to show that this construction of the act has no foundation—the first section of the funding act directs the preparation of $15,000,000 of bonds, or as many as should be necessary, *to consolidate and reduce the floating and bonded debt*—the officers who were to prepare the consolidated bonds, and the board of liquidation which was empowered to exchange them for certain forms of debt at the specified rate of 60 cents of consolidated for 100 cents of bonded or warrant debt, has been described.

The charge in the bill that the issue was expressly limited to a number sufficient to take up the bonded and warrant debt is not supported by the act. No such *express* provision is found in the act, nor can we legitimately imply any such restriction—the title is that the object of the act is to "*fund the obligations of the State;* the first section provides bonds to be used to consolidate and reduce *bonded and floating debt.*" The 13th section declares the "intent and object of the act, and of the exchanges under it to *restrict and reduce the whole indebtedness of the State to the sum of* $15,000,000.

The extracts from the funding act, as made in the bill, do not manifest the import and purpose of the act itself. Limitations on the powers of the board of liquidation, a mere fiscal agency of the State, are treated by the bill as a renunciation of legislative power, oversight and control on the part of the Legislature. The trust reposed in those officers is represented as an irrevocable trust, and that the legislature can not add to, vary, or withdraw any portion of the authority delegated to that board. Every term of the act, however foreign to the relation of creditor and debtor, is assumed to be a part of the contract, and that any deviation from it in any particular is a breach of the contract.

Such an interpretation might produce some curious anomalies and results.

The second specification of outrage is that the General Assembly has acknowledged a debt which is not due by the State.

We are unable to find any clause in the funding act which takes from the General Assembly the power to determine for the State the question of *indebitatus vel non*;—or, which entrusts that power to the plaintiff or any other holder of consolidated bonds. The Constitution of the State vests the legislative power of the State in the General Assembly. All bills to raise revenue must originate in the House of Representatives, and no money shall be drawn from the Treasury but in pursuance of specific appropriations made by law. None of the provisions of the State Constitution has withdrawn from the General Assembly the power to adjust, or to direct the adjustment of the debts of the State; nor is there any constitution which empowers any other department of the Government to review the action of the General Assembly on that subject. The Treasury of the State and the resources of the State, in the form of taxation on property, are submitted to the control of the General Assembly.

If we have at all succeeded in making a just exposition of the funding act, and in showing that the contract which the General Assembly tendered embraces no such terms as the plaintiff in

the bill asserts, and that there has been no concession to them of the prerogatives of the State, the bill is destitute of equity and should have been dismissed.

VI.

The appellant filed a demurrer to the bill, as originally framed on the 13th March, 1875: on the motion for injunction, it was discussed and the court signified an opinion that the bill contained equity. But the plaintiff deemed it expedient to introduce an amendment which departs from the original claim of the bill and affirms an additional right to interpose opposition to the Act of March, 1875, in relation to the Levee Company.

We have deemed it better to examine this addition to the bill separately from the bill as filed.

This amendment brings to the notice of the Court that only $2,200,000 of consolidated bonds have been issued in the 14 months from the date of the funding act—and the appellee in it renews his claim, that the bonds should not be used except to take up the bonded and warrant debts. But, this claim in the amendment is the preamble to another.

His present claim is, that the appellants really have no claim against the State, that in 1870 there was an amendment to the Constitution that the debt of the State should not be increased beyond $25,000,000. The appellee avers that in 1870 there was a debt exceeding $25,000,000.

He concludes that the consolidated bonds should be reserved for the reduction of the debt due in 1870 in bonds and warrants, and that if the bonds should be used for other debts the bonds would not be sufficient, and that great injustice was done to the holders of bonds and warrants not paid in bonds by diminishing the sum of the bonds to be applied to that purpose.

The position we take in reference to this claim is, that the plaintiff holds his three bonds, and that the securities he has contracted for have not been impaired.

It does not belong to him to take up the defence of parties, or the interests of parties whose rights and claims have not been propounded by themselves and who are apparently unconscious of injury or damage.

The Court has no jurisdiction over imaginary breaches of obligation and duty on the part of the State affecting parties who make no complaints, and that the sympathising and disinterested murmurings of the plaintiff over the wrongs of others do not confer jurisdiction upon the Courts. The acknowledgment of the debt of the defendant by the State and the provision made for its payment, are facts which the appellee has shown no title to dispute.

The provision for the payment of the debts of the State, by an issue of another class of bonds, was designed to include all of the indebtedness of the State. The discrimination made in the funding act in favor of bonds and warrants, may be accounted for in the history of the creation of the debts.

Some of the members of the Board of Liquidation have appeared in the legislative history and on the face of legislative acts, as manufacturers of those bonds and warrants to which but little obligation is attached by the public. The funding act grants to the board plenary powers to provide for these bonds, the progeny of these members. The probability is, that the reprobated debt of the State in bonds and warrants share largely of the $2,200,000 of consolidated bonds parted with. Whether the holders of the bonds issued before 1861 and bearing a low rate of interest, will accept, is doubtful. In such a case, if the law of this decree and the bill on which the decree is founded be maintained, those warrants and bonds which were an execration, a taunt and a curse before this funding will be the only accredited debt of the State.

As the matter stands, the bill shows that no debt not in the form of bond or warrant can be acknowledged, so as to share in this composition. That no bond or warrant can be paid unless

upon the deduction of forty per cent. The principle of the bill would entitle this holder to restrain the Legislature in collecting more taxes than the act and the amendment of the Constitution proposes for bonds accepted.

This bill treats this *concordat* as conferring upon each holder of a consolidated bond, the office of the *curator* of the State in the matter of taxation and appropriation. The bill is framed as if this plaintiff had become "un entrèpreneur du salus publique;" or, as a German term would describe him, a world better-er. He avers that the Act of 1875 relative to the defendant, is an outrage upon the people, and a great wrong to the benevolent persons who have so hurriedly funded bonds and warrants. He claims the State was bound to reduce its debt to $15,000,000 by its own sovereign declaration, and that any acknowledgment of other debts is a mischief to the class to which he belongs.

The damage he has sustained or will sustain he does not disclose. He fixes it at random at $2,000 so as to bring the case to this Court, but how the damage arises does not appear. Nor does he exhibit any commission from any other bondholder, to proclaim his wrongs or dissatisfaction. Nor do we find any warrant in his pleadings, for his concern in the particular welfare of the people of the State.

His case stripped of its drapery, is that of a holder of three bonds, seeking to restrain the State, the General Assembly and the fiscal agency in their operations, upon the allegations in respect to a contract, the cause and extent of which have been examined, and which without an unwarranted extension of all of its conditions does not justify a decree in his favor, such as has been rendered in his suit.

VII.

The Nature, and Validity, of the Claims of the Louisiana Levee Company upon the State of Louisiana.

We have regarded the claims of this Company on the State, as a matter not to be included in this inquiry. It belongs to the legislative department to determine whether there be a debt, and to provide for its ascertainment or adjustment. We deny that this plaintiff has any legal oversight or interest in the investigation. Consequently, the statement we shall make will be a brief one.

The Louisiana Levee Company was incorporated in 1871 by two acts of the General Assembly to be found in the acts of that year: Nos. 4 and 27, at pages 22 and 64. In the acts of incorporation there is a contract between the State and the corporation to construct, extend, and to maintain in repair the levees on the banks of the water courses of the State of Louisiana for a period of twenty-one years.

The price agreed to be paid was 60 cents for every cubic yard, and provisions are made for the estimates, supervision of the work, its measurement and payment for it. A special tax was imposed and pledged to raise the money. The payment was to be made from these specific taxes to be collected for this purpose from all of the taxable property of the State, and set apart in the treasury as a special fund to be used by the corporation from time to time as work was done. The assessment, collection and appropriation are provided for in the acts before mentioned. In the year 1873 (Session Acts, p. 83, Act No. 43,) the preceding enactments were remodelled and the compensation granted in the first acts was reduced from sixty to fifty cents per cubic yard. During the years 1871, 1872, 1873, the collection of the taxes provided for by the terms of the act before mentioned, and before this reduction, was not made and the claims of the Company for payment from taxes for the work

done in those years were unpaid and remained as a debt on the treasury. The claim thus originating is the subject of the Act of 1875 which the bill of the appellee calls in question.

The bill claims that the State was but a trustee or mandatory, and that there is no debt due for the work and labor performed by the State but only by the tax payers. The State regards herself as the debtor, and the work as having been done for the State.

ASSIGNMENTS OF ERROR.

1. The Circuit Court of the United States has erroneously granted an injunction in its decree to prevent the consummation of a settlement of a debt acknowledged to be due to one of the defendants by the State, and for which an appropriation was made of bonds of the State, and belonging to it, in the hands of the other defendant. The parties were competent to make this settlement. And the appellee has not shown any title to call in question the validity of the debt, nor the mode by which its sum was to be ascertained, nor to the form of the liquidation and payment. It belongs to the General Assembly to decide finally, whether there is a valid claim against the State, and who is the creditor.

The appellee has shown no title to interpose in this transaction.

2. That neither the constitutional amendment adpoted in January, 1874, nor the funding act of the same date, separately nor connectively, create a contract with the holder, or the holders of any of the consolidated bonds of Louisiana, whereby the State abdicated its prerogative to determine upon the validity of the claims upon it, through its General Assembly, or agencies of its appointment, or granted to those holders the faculty to review or to impugn the integrity of the exercise of that prerogative, and a contrary decision in favor of the plaintiff is error.

3. That neither the amendment, nor the act aforesaid precludes the General Assembly from submitting for settlement to the board of liquidation, other debts of the State than those manifested by bonds or warrants of Auditors and Treasurer. That the amendment and funding act comprehends all of the *obligations* and *indebtedness* of the State, and it is within the discretion of the General Assembly to enlarge or to define the functions of the board of liquidation. That the capacity, power or duration of the board of liquidation are not included in the contract with the bondholders, and the contrary of these allegations is error.

4. That the plaintiff, as the holder of three bonds, has no legal interest in the inquiry whether the Louisiana Levee Company be or be not a creditor of the State; nor in the inquiry whether the consolidated bonds can be used only for bonds and warrants, or may be applied for other debts of the State. Nor whether the act of 1875 objected to, be or be not injurious to the holders of other bonds or warrants. And forasmuch as the court has allowed the plaintiff a standing to affirm the contrary, and has maintained his claim, there is error in this decree.

5. The decree of the court prohibits the board of liquidation, composed of the principal officers of the executive and the legislative departments of the State, and created under the constitutional amendment and the act of the General Assembly of the State, to liquidate and adjust, *purely*, State debts, from acknowledging and paying a debt of the State which the General Assembly of the State has acknowledged, and of employing the securities of the State itself to novate this debt, and to change its form, at the suit of a person who has no interest in any one of these *securities*, nor claim on them, and who is a stranger to transactions between the State and its creditor.

The said Circuit Court had no jurisdiction of the subject of the settlement between the State and this creditor, nor jurisdiction to prohibit the State from making an issue of the bonds to

effect that settlement; nor to place this injunction on the board of liquidation.

Nor is there any equity in the claim of the plaintiff to interpose, to hinder, or to prevent the consummation of the contract between the State and the Levee Company. Wherefore the court should have sustained the demurrer to the bill instead of granting the decree. The defendants for the errors apparent in the decree, pray judgment, and that it be reversed, and that the plaintiff pay all costs.

The Points Stated; with the Arguments to sustain them and the Citation of Cases.

I.

The General Assembly of the State of Louisiana, is vested with legislative power. It provides for the assessment and collection of taxes; the appropriations of money in the treasury; the control of public property, and has exclusive power to contract debts in the name of the State, and to provide the means of their payment. No other department of State government is authorized to abridge or to annul their powers. When the Act of March, 1875, was passed, directing the ascertainment of the amount of the debt due by the State to the Louisiana Levee Company, and the payment with consolidated bonds of this debt arising for work done under its direction, the General Assembly was exercising ordinary power of legislation, and the Act is valid *unless* the appellee be able to show a restriction on the legislative power adequate to the purpose of annulling the Act. The burden of proving this is on the appellee. If a particular act of legislation does not conflict with any of the limitations or restraints imposed by the Constitution, it is not in the power of Courts to arrest the execution of the act,

McCulloch vs. Maryland, 4 Wh., 428; 1 Kent's Com., 425.
People vs. Draper, 15 N. Y. R., 543; 23 N. Y. R., 318.

People vs. N. Y. Canal Board, 55 N. Y. R., 390.
11 Louisiana Ann., 338.
9 Harris, 161.
Potter on Stat., 368-9.

II.

Where an Act of the General Assembly acknowledges a debt as due to a citizen, or a corporation, and provides for its payment in money of the treasury, or bonds of the State, another citizen or corporation having no interest in the claim, or the funds appropriated for payment, is without a standing in the Courts of the United States to impeach the legislative acknowledgment of the debt as erroneous or impolitic, or to prevent the affairs of the State to execute the Act. If there be any authority competent to dispute the Act, it must proceed for the State itself, and be pursued in its name and for its benefit. The State and its creditors are the only *parties in interest in the transaction or settlement.*

Fletcher vs. Peck. 4 Cr., 131.
The People vs. Draper, 15 N. Y. R., 543; 18 N. Y. R., 155; 23 N. Y. R., 318; 65 Barb., 460.
Sharpless vs. Mayor, 9 Harris, 162.
Potter on Stat., 368.

III.

The constitutional amendment adopted in 1874, neither alone nor in connection with the funding act, can be properly construed to grant to the holder or holders of consolidated bonds, a faculty to contravene the validity or the obligation of an acknowledgment or assumption of a debt by the General Assembly, as due from the State. That the Act (No. 24, p. 55,) of 1875, to ascertain the amount due to the Levee Company, to pay it with bonds, is a valid recognition of a debt due to the

Levee Company by the State, and authenticates it so as to preclude the inquiry set on foot by the appellee.

The averments in the bill denying the debt, are contradicted by the terms of the Act itself, which is conclusive of the matter enacted and declared.

IV.

The claim of the appellee is, that the eleventh section of the *funding act* has such comprehension, as to include in the *contract* it creates every line and letter of the constitutional amendment, and of the funding act. His bill asserts a title for himself, or any other holder of consolidated bonds to surview the legislative and administrative departments of the State governments in all of their action referring to the execution of the regulations, details, or directions of these measures. He claims that at his suit, and for his own interest and rights, he can restrain the State and the assembly from using any of these 15,000 consolidated bonds otherwise than to buy up, the bonds and Auditor's warrants at a discount of forty per cent.; that providing for any other debt violates the right, and damages the estate of any and every bondholder. That the board of liquidation can have no enlargement of power or of duty.

That the third and fifth sections of the funding act determines its unalterable obligations. That the two measures exhaust the powers of the State and the General Assembly in all that concerns debt, revenue, appropriations, as referred to in them. On the contrary, we contend that the *contract* in the bond itself is merely a contract to pay so much money. But that, to afford evidence of the disposition and purpose of the State, the amendment to the Constitution annexes to the bond, a declaration of its purpose, and that this declaration shall be regarded as an obligation embodied in the contract. The State recognizes the issue as a valid obligation which shall not be impaired for any cause. 2d. That the taxes to be laid shall be assessed, collected

and paid over by the *Treasurer* of the State, *without* any further *legislation.* That *no court* shall have power to *injoin* the performance of any of these acts, but judicial power may be employed to assist and to enforce the remedies for the collection of the taxes. That the debt of the State shall be regularly reduced, and that appropriations beyond current revenues shall be null and void.

Dr. Johnson has said that an English conveyance is one of the bitterest satires on mankind. It is so guarded, precise and particular. No judgment of condemnation of the past conduct of the State Government of Louisiana could be more severe than the precautions here taken and experience authorizes against habitual malfeasance in every department.

The object of the funding act is declared in the first section. This is stated to be to reduce and consolidate the "*floating* and *bonded debt.*" The term floating debt is a term drawn from the French finance "*Dette flottante.*" It implies the same as "unfunded" or "unredeemed" debt of English finance. It is defined as a debt, floating between variable limits according to the condition of the treasury and exigible at undetermined dates. As circulating, passing, not fixed. It is used in contradistinction to consolidated, funded, redeemed debt. The term includes the claim of the defendant. To reduce this floating debt, and to reduce the "entire indebtedness" so that it shall not exceed the sum of $15,000,000, is the somewhat sanguine promise of these measures.

But to accomplish this something more was needed than the desire, or the will of the State, or of its General Assembly. No creditor could be coerced to accept the terms proposed. Some creditors might be rejoiced to accept—to wit: the holders of the fraudulent, reckless, and dishonest issues of bonds and warrants during the last eight years.

Others who had purchased bonds when the State was prosperous and legislation unpolluted, paying a premium for its six

per cents., naturally would hesitate to an association with these other holders. The State could not therefore have contemplated a *finality* by these measures, or to preclude itself from adopting other measures in reference to dissenting or recalcitrant creditors. The *overture* of the State is tentative in its character and its terms. The board of liquidation is but a fiscal agency, appointed by the State and the control of the State.

It is a mere syndicate, the persons and powers of which may be changed like those of any other board of mandatories. The powers granted to this board are to be exercised with effect until revoked, but they may be revoked at the legislative will—they were enlarged and modified without any violation of law, or obligation, by the Act of March, 1875, relative to the defendant in this suit. The 7th section of the act is made to secure the State from the misfeasance of the board and its members and accomplices in wrong-doing, and is not a restraint on the State, nor was it designed to cripple its powers. The 3d section imposes no limitation on the State or Assembly. These are directions to a subordinate agency and revocable at the legislative pleasure.

V.

But let us examine these measures upon the construction given to them in the bill of the appellee and affirmed in the decree of the Circuit Court. Suppose we concede in all of their fullness the doctrines they maintain and admit, that there is an obligatory contract with the appellee, and each holder of any one of the 15,000 consolidated bonds, as they are issued, that the regulations, details, administrative arrangements, proposed economical reforms in appropriations and expenditures; and also the appropriation of bonds in the 3d and 7th sections are absolute and irrevocable, never to be changed except by consent of the holders of all of these bonds. Certainly, these measures make a revolution in the State. These measures for a period of forty years involve the employment of the most necessary and

The board of liquidation is its syndicate or assignees, with exclusive unalterable powers to settle, and the creditors may interpose an interdict at any time for forty years, against its debtor, so as to insure the payment of their instalments of interest, and their principal at the end of the term. None but the bonded and warrant debt to have a settlement. We are entirely unable to reconcile ourselves with such conclusions. The legislative department of the State is the precedent department in the State government.

No sovereignty can be exerted unless with laws adopted or sustained through the legislative authority. The initiation of civil and political action belongs to this department. To prevent collision in the action of the Government without impairing the independence of the departments, whatever discretionary power is allowed, is vested in the Legislature. Without this each would have the same right to determine what powers are necessary and proper for the execution of such laws as may fall under their purview, thus there would be mischievous and even dangerous conflicts between the different branches of the same government. As a necessary consequence it become an axiom in the law of procedure that no suit can be brought against a sovereign power without the consent of the legislative authority of the State. It was decided, upon a preliminary motion in the case of Chisholm vs. Georgia, 2 Dall., 419, that the Supreme Court had original jurisdiction of a civil suit against that State. But immediately the decision was reproved by the adoption of the eleventh amendment, that the judicial power of the United States *should not be construed* to extend to such cases in future, and no case went to judgment. The reporter of the court records that all such cases were swept from the docket by the amendment. This court has decided in a series of cases that where the State is the substantial party in interest and right, and the officer sued a mere functionary of the State without

right, but only a depository of the State, the court would not entertain jurisdiction.

1 P., 124; 7 Pet., 627; 24, H. 65; 5 Cr., 115.

The Circuit Court of the United States reposed upon the dicta in Davis & Gray, in 19 Wallace.

But these we insist must be referred to that case, and that the principle we have stated applies to this.

VI.

The appellee does not show any title in himself to interpose in this proceeding. He holds three bonds. Nothing is done to impugn his title to them, nor to take away any pledge of security applicable to them. He cannot represent the State nor the other creditors, nor vindicate their wrongs or grievances. The question is, what concern has this plaintiff with the arrangements of the State with the defendant?

The only answer is, that he fears his three bonds may be in some unexplained manner diminished in value $2000. Beyond this emotion of panic apprehension he is a volunteer, maintaining a benevolent complaining and murmuring for unknown persons who have no complaints or murmurs to make.

VII.

The debt of the Louisiana Levee Company is a matter between the State and the Company, and the plaintiff is not authorized to contest it. The debt is due.

People vs. Pacheco, 27 Cal., 175.

JOHN A. CAMPBELL,
Attorney for Appellants.

APPENDIX.

No. 3.] AN ACT

To provide for funding obligations of the State by exchange for bonds; to provide for principal and interest of said bonds; to establish a board of liquidation; to authorize certain judicial proceedings against it; to define and punish violations of this act; to prohibit certain officers diverting funds except as provided by law, and to punish violations therefor; to levy a continuing tax and provide a continuing appropriation for said bonds; to make a contract between the State and holders of said bonds; to prohibit injunctions in certain cases; to limit the indebtedness of the State, and to limit State taxes; to annul certain grants of State aid; to prohibit the modification, novation or extension of any contract heretofore made for State aid; to provide for the receipt of certain warrants for certain taxes, and to repeal all conflicting laws.

Board of Liquidators.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That for the purpose of consolidating and reducing the floating and bonded debt of the State, the Governor, Lieutenant Governor, Auditor, Treasurer, Secretary of State and Speaker of the House of Representatives are

Shall issue bonds.

hereby authorized to cause to be prepared, and to issue bonds, to be known as "consolidated bonds of the State of Louisiana," of the denominations of one hundred, five hundred and one thousand dollars, to the amount of fifteen millions of dollars, or so much thereof as may be necessary, all payable forty years from the first day of January, 1874, and all to be numbered consecutively, and

Rate of interest

made payable to bearer, and to bear interest at the rate of seven per cent. per annum, payable semi-annually in the city of New York and city of New Orleans, on the first day of July and January of each year, and coupons for such interest shall be annexed thereto; said interest and principal to be payable in lawful money of the United States.

Fiscal agent.

SEC. 2. *Be it further enacted, etc.*, That the parties designated in the foregoing section shall constitute a board of liquidation, and a majority of said board shall elect a fiscal agent for the State, who shall be a member of said board.

Bonds and coupons—how signed and exchanged.

SEC. 3. *Be it further enacted, etc.*, That the bonds authorized by section one shall be signed by the Governor, Auditor and Secretary of State, and the coupons shall be signed by the Auditor and Treasurer; and when so prepared said bonds shall be exchanged by the board of liquidation for all valid outstanding bonds of the State and all valid warrants drawn previous to the passage of this act by the respective Auditors of Public Accounts of the State on the Treasurer thereof, except warrants issued by the Auditor in payment of the constitutional officers of the State, at the rate of sixty cents in consolidated bonds for one dollar in outstanding bonds and all valid warrants;

provided, that the holder of any bond or valid warrant rejected by a majority of said board may apply by petition to the proper court for relief, and if final judgment shall be rendered in his favor against said board, it shall be the duty of said board to fund his said claim in bonds at the rate provided by this act; *and provided further*, that if any member of said board of liquidation shall knowingly audit and fund any illegal claim against the State he shall be deemed guilty of a misdemeanor, and shall, on conviction, be fined not less than five thousand dollars and be imprisoned not less than two years at the discretion of the court. And any person knowingly procuring the same to be done shall be subject to the same penalty.

Penalty to audit illegal claims.

SEC. 4. *Be it further enacted, etc.*, That the exchange of the bonds or valid warrants authorized by this act shall be effected by said board of liquidation in the cities of New Orleans and New York.

Exchange of bonds—where affected.

SEC. 5. *Be it further enacted, etc.*, That the consolidated bonds herein authorized shall be held and used by said board of liquidation only for the purpose of exchange as aforesaid; said bonds shall be used for no other purpose or purposes than as authorized by this act, and any member of the board of liquidation using or attempting to use, or attempting to induce any person or persons to use, said bonds or any of them for any other purpose or purposes shall, on conviction thereof, be punished by a fine of not less than five thousand dollars and by imprisonment at hard labor for not less than one year.

Bonds—for what purpose used.

SEC. 6. *Be it further enacted, etc.*, That notice of the adoption of this act shall be published by said board in one or more journals of New Orleans, New York, London, Paris and Amsterdam.

Notice of adoption to be published.

SEC. 7.—*Be it further enacted, etc.*, That a tax of five and a half mills on the dollar of the assessed value of all real and personal property in the State is hereby annually levied, and shall be collected for the purpose of paying the interest and principal of the consolidated bonds herein authorized, and the revenue derived therefrom is hereby set apart and appropriated to that purpose, and no other. And that it shall be deemed a felony for the Fiscal Agent or any officer of the State or board of liquidators to divert the said fund from its legitimate channel as provided, and upon conviction the said party shall be liable to imprisonment for not more than ten years nor less than two, at the discretion of the court. If there shall, during any year, be a surplus arising from said tax after paying all interest falling due in that year, such surplus shall be used for the purchase and retirement of bonds authorized by this act, said purchases to be made by the said board of liquidation, from the lowest offers, after due notice; *provided*, that the total tax for interest and all other State purposes, except the support of public schools, shall never hereafter exceed twelve and a half mills on the dollar. The interest tax aforesaid shall be a continuing annual tax until the said consolidated bonds shall be paid or redeemed, principal and interest; and the said appropriation shall be a continuing annual appropriation during the same period, and this levy and appropriation shall authorize and make it the duty of the Auditor and Treasurer, and the said board, respectively, to collect said tax annually, and pay said interest and redeem the said bonds until the same shall be fully discharged.

Tax on real and personal property.

Penalty for diverting tax fund.

Surplus—how applied.

Interest tax—how applied.

Bonds and warrants—how canceled and destroyed.

SEC. 8. *Be it further enacted, etc.*, That the bonds and valid warrants outstanding at the time of the passage of this act, shall, as fast as they are received in exchange for consolidated bonds, be canceled and destroyed by the said board of liquidation, and consolidated bonds purchased as provided for in section seven of this act, shall be canceled and destroyed after public notice has been given of the same in the official journal of the State, in the presence of as many citizens as may desire to be present, in like manner, and within ten days after such destruction, in each case, a *proces verbal* of the same shall be published and a report made to the General Assembly on the first Monday of every year, by said board.

Auditor to report annually.

SEC. 9. *Be it further enacted, etc.*, That it shall be the duty of the Auditor in his next annual report to give a detailed account of the proceedings had under this act, including the amount of new bonds issued, the amount of old bonds and valid warrants canceled, the amount of the same outstanding, and the cost of the exchange; and annually thereafter a full and exact statement of the condition of the public debt under the operations of this act.

Penalty for non performance of official duty.

SEC. 10. *Be it further enacted, etc.*, That any judge, tax collector, or any officer of the State, obstructing the execution of this act, or any part of it, or failing to perform his official duty thereunder, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment not exceeding five years, and by fine not exceeding two thousand dollars, at the discretion of the court; *provided*, that this section shall in no wise prejudice or affect the criminal proceeding under section five of this act.

Each provision a contract.

SEC. 11. *Be it further enacted, etc.*, That each provision of this act shall be, and is hereby declared to be, a contract between the State of Louisiana and each and every holder of the bonds issued under this act.

State aid repealed and annulled.

SEC. 12. *Be it further enacted, etc.*, That all grants of State aid heretofore made, whether of bonds, indorsements, subscriptions of stock, or otherwise, which have become lapsed or forfeited, be and the same are hereby repealed and annulled, nor shall the State hereafter modify, novate, or extend any contract heretofore made for the giving of State aid in any form or under any pretext.

Limit of State debt.

SEC. 13. *Be it further enacted, etc.*, That the entire State debt, prior to the year of our Lord nineteen hundred and fourteen, shall never be increased, directly or indirectly, beyond the sum of fifteen millions of dollars, hereby authorized, it being the intent and object of this act, and of the exchanges to be effected thereunder, to reduce and restrict the whole indebtedness of the State to a sum not exceeding fifteen millions of dollars, and to agree with the holders of the consolidated bonds to be issued hereunder that said indebtedness shall not be increased beyond said sum during said period.

Tax collector to turn over all money and warrants to State Treasurer

SEC. 14. *Be it further enacted, etc.*, That any tax collector who shall turn over any money or warrants by him collected, to any person except to the State Treasurer, shall be deemed guilty of a misdemeanor, and shall, on conviction, be subject to the penalties prescribed in section ten of this act, and shall, in addition thereto, be liable in damages in double the amount so turned over; and any State

officer requiring or demanding that said taxes shall be turned over to him, except the Treasurer of the State, shall be liable, on conviction, to the same penalties as are prescribed in this section.

Auditor's warrants—how received for back taxes.

SEC. 15. *Be it further enacted, etc.*, That from and after the passage of this act until the first day of July, 1874, all valid Auditor's warrants issued for debts due prior to January 1, 1874, shall be received for all back taxes, licenses and interest and penalties thereon due prior to said first of January, 1874, except two mills for school fund, three mills for levee construction and repair fund, and two mills to the interest fund for the purpose of paying any interest in arrears accruing on the bonded debt of the State prior to the passage of this act.

Power of court or judge to injoin.

SEC. 16. *Be it further enacted, etc.*, That no court, or judge thereof, shall have power to injoin the payment of principal or interest of any bond issued under this act, or the collection of the special tax therefor, or to injoin any officer of State or parish in receiving warrants, as is prescribed in section fifteen of this act.

SEC. 17. *Be it further enacted, etc.*, That all acts or parts of acts in conflict with this act, or any section thereof, are hereby declared to be repealed, and that this act shall take effect from and after its passage.

No. 4.] AN ACT

Proposing amendments to the constitution of the State of Louisiana.

Constitutional amendments—how made.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened (two-thirds of the members of each house agreeing thereto)*, That the following amendments be proposed and entered upon the respective journals of the Senate and House of Representatives, with the yeas and nays taken thereon, and the Secretary of State shall cause the same to be published three months before the next general election for representatives to the General Assembly in at least one newspaper in every parish of the State in which a newspaper shall be published. And said proposed amendments shall be submitted to the people at said election in such manner and form that the people may vote for or against each amendment separately—*i. e.*, "first proposed amendment, for approval," or "against approval," and in like manner as to the others; and if a majority of the voters at said election shall approve and ratify such amendment or amendments, the same shall be appropriately numbered and become a part of the constitution, and be proclaimed as such by the Governor and Secretary of State.

PROPOSED AMENDMENTS TO THE CONSTITUTION.

Consolidated bonds.

No. 1.—The issue of consolidated bonds authorized by the General Assembly of the State, at its regular session in the year 1874, is hereby declared to create a valid contract between the State and each and every holder of said bonds, which the State shall by no means and in no wise impair. The said bonds shall be a valid obligation of the State in favor of any holder thereof, and no court shall injoin the payment of the principal or interest thereof, or the levy and collection

of the tax therefor; to secure such levy, collection and payment, the judicial power shall be exercised when necessary. The tax required for the payment of the principal and interest of said bonds shall be assessed and collected each and every year until the bonds shall be paid, principal and interest, and the proceeds shall be paid by the Treasurer of the State to the holders of said bonds as the principal and interest of the same shall fall due, and no further legislation or appropriation shall be requisite for the said assessment and collection and for such payment from the treasury.

State debt.

No. 2.—Whenever the debt of the State shall have been reduced below twenty-five million dollars, the constitutional limit shall remain at the lowest point reached, beyond which the public debt shall not thereafter be increased; and this rule continue in operation until the debt is reduced to fifteen million dollars, beyond which it shall not be increased. Nor shall taxation for all State purposes, excepting the support of public schools, ever exceed twelve and a half mills on the dollar of the assessed valuation of the real and personal property in the State, except in case of war or invasion.

Revenue.

No. 3.—The revenue of each year derived from taxation upon real, personal and mixed property, or from licenses, shall be devoted solely to the expenses of the said year for which it shall be raised, excepting any surplus remain, which shall be directed to sinking the public debt. All appropriations and claims in excess of revenue shall be null and void, and the State shall in no manner provide for their payment.

No. 24.] AN ACT.

Prescribing the manner of ascertaining the amount due the Louisiana Levee Company from the State on the first day of October, 1873, and to provide for funding the said debt.

Louisiana Levee Company—by whom to ascertain the amount due from the State.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That the standing Committees on Lands and Levees of the Senate and House of Representatives are hereby constituted a joint committee for the purposes of this act, and are hereby directed and required, within ten days from the passage thereof, to ascertain the entire amount due the Louisiana Levee Company from the State of Louisiana for work done up to the first day of October, 1873, after deducting all payments made by the State on account of said work up to that date, and the said joint committee shall within the said ten days make detailed reports in duplicate, one to the Governor of the State and one to the President of said Company, said reports to be accompanied by their certificates stating the exact amount due the said Levee Company from the State on the first day of October, 1873, and the said joint committee is hereby continued and authorized to remain in session for a sufficient time after the adjournment of the General Assembly to enable it to make the examination and report herein required.

Joint Committee—duties of, by whom to perform in case of failure of.

SEC. 2. *Be it further enacted, etc.*, That should the joint committee, as constituted by the preceding section of this act, fail to perform the duties imposed upon it by this act within the time prescribed therein, the said duties shall be performed immediately thereafter by the commission of persons appointed under act No. 27 of the session of 1871,

ratifying and confirming a contract between the State and the Louisiana Levee Company, approved February 27, 1871. And the reports and certificates made by said "commission of persons" shall have the same force and effect as though made by the joint committee herein provided for.

SEC. 3. *Be it further enacted, etc.*, That it shall be the duty of the board of liquidation created by act No. 3 of the session of 1874, approved January 24, 1874, upon the presentation to them of a report and certificate made as prescribed in the preceding sections of this act, and of a demand made in person or in writing by the President of the Louisiana Levee Company, to issue and deliver a sufficient number of the consolidated bonds of the State of Louisiana, of the denominations, and description prescribed in the act creating said "board of liquidation," to cover the indebtedness of the State to said Company as ascertained in the manner herein described; *provided, however*, that the Louisiana Levee Company shall, upon receiving said bonds, file with the Secretary of State a resolution of its Board of Directors accepting said bonds, and releasing the State from any further obligation or indebtedness up to the first day of October, 1873; *and provided further*, that all back taxes for the levee construction and repair funds due and payable in the years 1872 and 1873, which shall be collected after the acceptance by the Levee Company of the bonds of the State in liquidation of the claims of said Company shall, from and after said acceptance be placed to the credit of the general fund for the years in which said taxes were due and collectible.

Board of Liquidation—duty of.

SEC. 4. *Be it further enacted, etc.*, That all acts and parts of acts inconsistent with or conflicting with this act are hereby repealed.

SEC. 5. *Be it further enacted, etc.*, That this act shall take effect immediately.

Supreme Court of the U. S.

No. 609.

BOARD OF LIQUIDATION ET AL., APPELLANTS,

vs.

HENRY S. McCOMB, APPELLEE.

Appeal from the Circuit Court of the United States, District of Louisiana.

BRIEF FOR LOUISIANA LEVEE CO.

J. A. CAMPBELL,

Attorney.

Murphy & Co., Printers, Publishers, Booksellers & Stationers, Balt.

In the Supreme Court of the U. S.

No. 609.

BOARD OF LIQUIDATION, ET AL., APPELLANT,

vs.

H. S. McCOMB, APPELLEE.

The Louisiana Levee Company, by attorney comes, and for answer to the motion made in this Court by A. P. Field, on behalf of the State of Louisiana and the Board of Liquidation, says: That they cannot consent to a motion being made for the State of Louisiana for the reason that the State of Louisiana was not a party to the cause in the Circuit Court, nor had that Court any jurisdiction or authority to entertain a suit for or against the State of Louisiana like the present, nor to render a decree against the State as a defendant in such a cause. Nor has this Court authority or jurisdiction to admit the State of Louisiana to make a motion to dismiss the appeal allowed by the Circuit Court in this cause; and for the reason that this motion has been improvidently submitted, this respondent prays judgment of the same, and that it be disallowed.

2. For further answer this respondent shows, that on the 3d of March last. their President received in the afternoon a notice to appear before Judge Woods, at Pensacola, Florida, at 10 A. M. of the day following (4th March) to hear a motion at the suit of McComb, for the allowance of a restraining order to prohibit the execution of an Act of the General Assembly of the State which had passed only the day previously, (2d March.) Record, p. 4–5. Of course no appearance was made, and the order was granted affecting both this respondent and the Board of Liquidation.

This respondent demurred to the bill, and, according to the practice of the Court, there was a hearing and a *final* decree was made for a value above $2,000, besides cost, against this defendant. An appeal was prayed simultaneously with the announcement of the decree, and perfected by a bond approved by the Court; all of this appears in this record. Wherefore it fully appears that this respondent has fulfilled all the conditions which the law and the practice of the Court requires to entitle them to a hearing in this Court, and there exists no cause for the dismissal of their appeal.

3. This respondant states, that the Board of Liquidation is a defendant to the bill, and was charged with a purpose to defeat the plaintiff by complying with the Act of the General Assembly of the 2d March. Wm. P. Kellogg was served with the notice to go to Pensacola. Kellogg gave this notice to Field for his attention, he claiming to be Attorney General, as Kellogg claimed to be Governor. Mr. Fellowes appeared in the Court in the place of Field, and at his request. No one doubted, or had any reason to doubt, his authority to appear. His duty evidently was to defend the Legislative Act from the impeachment of McComb, and to deny the jurisdiction of the [illegible] Court over the subject of the suit. His duty was not to collude with McComb in procuring a decree by consent, or by default. He did what was an obvious duty, and not a breath of complaint was made public till after the proceedings in this Court for a hearing of this cause here. The counsel of the Levee Company were wholly unadvised on the subject, and acted with Mr. Fellowes as entirely empowered to do as he has done.

Nor do the said Company, or its counsel, have any reason to believe that there was any ignorance in the Board of Liquidation in respect to this state of the case. These facts fully appear by the affidavit of Mr. Fellowes filed herewith.

J. A. CAMPBELL,
Attorney.

Supreme Court of the U. S.

No. 609.

BOARD OF LIQUIDATION, ET AL., APPELLANTS,

vs.

HENRY S. McCOMB, APPELLEE.

Appeal from the Circuit Court of the United States, District of Louisiana.

On the motion to dismiss the appeal, made by the counsel for the apppellee, on behalf of the Board of Liquidation.

The Board of Liquidation was represented in the Circuit Court by J. Q. A. Fellowes, Esq., an attorney of that court. He had previously represented the Attorney General in a number of civil causes of importance, both in the State and the United States Courts, and during the progress of this cause his authority was never called in question.

His affidavit, filed in this cause, shows that he appeared by the directions of the Attorney General, A. P. Field, who placed in his hands the process issued to the Board of Liquidation. The cause was commenced in the early part of March, 1875; it was continued for several weeks in the Circuit Court. The record shows there was argument, judicial advisement, an amendment of the bill, a decree, an appeal in open court, and a bond given by a member of the Board of Liquidation. Mr. Fellowes

states that he "was and is confident, that his acts and doings were known to and approved by the Board, and the results of such action was noticed in the newspapers of the day published in New Orleans."

The record shows that the appeal was taken in April last. The Circuit Court remained in session until the 1st of July. No objection was made to this order of appeal during that period. If the Board of Liquidation had declined to join in the appeal no sort of inconvenience would have resulted. A summons and severance would have been an easy matter. But there was no refusal, but a joinder in the appeal, and a compliance with all of the conditions. We had no notice that the suit was collusively conducted between McComb and the Board of Liquidation, if that were then, as now it seems to be, the fact. In October the counsel for the Levee Company moved for the advancement of the hearing of the cause in this court.

Mr. Fellowes was in Washington at the time. Notice of the proposed motion was given to the counsel of McComb. A full brief was filed and forwarded to opposing counsel. We were not then advised that the Board of Liquidation had shifted its place and purpose on the record, and that an *entente cordiale* had been established between the plaintiff and a co-defendant. It was only after this court had fixed the day for a hearing that we had any notice of the matters set forth in the affidavits. After reading the affidavit of Mr. Fellowes, we take refuge in entire and absolute incredulity as to the existence of the matters stated in those as facts.

The record shows the appearance of Mr. Fellowes. His affidavit shows how he came to appear.

His demurrer affirms the validity of the act of the General Assembly of the State of March, 1875. Is it the duty of an Attorney General to *confess* the invalidity of a legislative act or urge a court to disregard it. Was that the right or the obligation of a Board of Liquidation? Having been directed to

appear to the cause, Mr. Fellowes was authorized to take an order for an appeal. No new authority was requisite to justify his action.

Grosvenor vs. Danforth, 16 Mass., 74.
1 Pick, 462, 2 N. H., 520.
13 Lous. Ann., 487; 4 T. B. Mon, 377.

None will deny that the Levee Company could have appealed. If the Board of Liquidation was willing to appeal a joinder was necessary.

Owings vs. Kincannon, 7 Pet., 399, 12 P., 140.

If the Board refused to appeal, a summons and severance might have been necessary; it was certainly allowable and proper.

Todd vs. Daniel, 16 Peters, 521.
1 Stew. & Port., 253.
Cullum vs. Batre, 1 Ala. R., 126.

We say that a summons and severance *might have* been *necessary*. But the Board of Liquidation is but a stakeholder—a mere agency, and not entitled to dispute an act of the General Assembly.

It is questionable whether it be an essential party to the appeal at all, for it has no interest in the property or the subject of the suit. The question is between the creditors—such as McComb—and the State of Louisiana as represented by the Levee Company, holding a title under the act of the General Assembly of the 2d March, 1875, No. 24. No party not having such an interest needs to appeal.

Brewster vs. Wakefield, 22 How., 118.
Forgay vs. Conrad, 6 How., 201.
7 Paige, 18; 19 Louis. Ann. Rep., 327.
2 Patt. & H., Va., R. 53.
Alleghany Bank, 48 Penn., 328.

But the Board of Liquidation comes regular before the Court. The order of appeal was made by the Court upon the motion of counsel appearing for it, and by the act of one of its members. The Board may desert the appeal if it be so advised, and may decline to join in the assignment of errors. But this does not involve a dismissal of the appeal or carry any disorder into the proceedings. The Court will determine the cause between the only contesting parties.

Todd vs. Daniel, 16 Pet., 521.
Forgay vs. Conrad, 6 How., 201.
Cullum vs. Batre, 1 Ala. R., 126.
1 Stew. and Port., 253, 23 How., 481.

This motion seems to throw some light upon an obscure place in this suit. McComb came into the Circuit Court as the holder of three bonds of $1000 each, worth but little more than half their nominal value. His complaints of loss and damage from the action of the General Assembly of the State in reference to the defendant, are exaggerated and inflamed. There is a manifest lack of sincerity and truth in the statements which led to the suspicion that there was some thought behind and not disclosed. When this cause comes to be finally decided in this Court, there is a shift of scene and a change of characters. The Board of Liquidation comes forward under the guidance of McComb's counsel, and moves to dismiss, an appeal to which it had been a party, and asks a decree which their counsel had disputed in the Circuit Court.

This board is simply an agency disputing the orders of its principal and master—the General Assembly.

We shall pass to the brief filed by the appellee, and in doing so are met with another effort of this appellee to cover himself with the cloak of the State.

The motion we have considered purports to be made by the Attorney General for the State of Louisiana. The Attorney

General being the person alluded to in the affidavit of Mr. Fellowes. On the front of this brief we read, "*Brief of the State of Louisiana which appears by counsel to aid the appellee, and ask for* AFFIRMANCE OF THE DECREE IN THE COURT BELOW."

PRODIGIOUS!! Who has seen this appearance of the State of Louisiana in this cause, and who has heard her prayer? When did she come, by what conveyance, and at whose invitation? Who ventures to speak for her in this cause in this Court? The Circuit Court had no jurisdiction under the Constitution or of the laws to bring the State of Louisiana before it in a cause like the present, or to give to it a hearing whether as a plaintiff or a defendant. Nor did that Court consciously do so, but repelled the argument against the jurisdiction of the Court. Nor would this Court allow the State of Louisiana to make a prayer for a decree in this Court in this cause, were her General Assembly or her people to come for the purpose. The Court has no power under the Constitution to hear such a prayer.

This endorsement on this brief has perhaps a parallel in the part of COOL in the play of "London Assurance."

The record shows that the General Assembly passed the act relative to the Levee Company the 2d March, 1875. Two days after (4th March) McComb's attorney was in the City of Pensacola, in Florida, making affidavit to a bill for McComb, and applying to the Judge for a restricting order; notices having been served on the day previously (3d March) in New Orleans. The notice served on Kellogg was given to Fields, and he gave it to Mr. Fellowes; and the want of jurisdiction of the Court in the cause was from the first asserted because the State of Louisiana was drawn into the case necessarily, and that the Court was debarred from exercising any judicial power in such a case. This government in Louisiana might be reduced to a mere satrapy were its present officers allowed to determine its relations to the States or the country.

If there be a representation of the State here in any appropriate sense, it appears in the case made by the appellants. The General Assembly, by the act of the 2d of March last, agreed to a settlement with the Louisiana Levee Company. This settlement the Board of Liquidation was directed to execute without addition, division or speech. Singularly, as soon as the act passed, McComb, the holder of three bonds, sends an attorney to a distance for a restraining order, and with exaggerated statements of the prerogatives of this Board of Liquidation and of his own damage. The jurisdiction of the Court over the cause and the parties, was denied in the Circuit Court, and the record presents no other questions to be presented here. The proposition of these persons is to *confess* a judgment affirming the jurisdiction of the Court, of the Board of Liquidation, and McComb's panic.

We have discussed in our brief the powers of this Board of Liquidation and its relations to the State and the General Assembly. It would be to the last degree mischievous to make a decision to give to it any stability or to place it for an instant beyond the control of the State authorities. All look forward to a period of regeneration in the State.

The important inquiry in this cause is whether, after the General Assembly of the State has adopted the Act of the 2d of March, 1875, directing a settlement of a debt due by the State to the Louisiana Levee Company, by the payment of its own bonds in the hands of its own agent, this settlement can be called in question in the Circuit Court by Henry S. McComb on the matters charged in the bill, and that Court can, by a restraining order or injunction, hinder or prevent that settlement.

The collusion between McComb and certain persons holding temporary positions in the State, cannot vary the question nor detract in the least from its importance.

The charter of the Louisiana Levee Company shows that whatever concerns the construction, maintenance, support, or repair of levees in the State is committed to the custody management and control of this corporation. The expenditures of the corporation are very large, which are reïmbursed by an assessment of taxes on all of the taxable property of the State by the officers of the State, and which are collected in the same manner, at the same time, and by the same officers as ordinary taxes are. This is a separate fund to meet this demand. During a period of usurpation, misgovernment and consequent distrust, these taxes have not been collected; or if collected, have been otherwise applied. The General Assembly recognized the service of the corporation and the liability of the State, and proposed to pay the debt due in money, by bonds worth some fifty or fifty-five cents in the dollar.

These facts stand out in the Acts of the General Assembly which appear in the briefs that have been filed, and the allegations of the bill do not controvert them in any material degree.

It is obviously the duty of these official persons to perform the functions the General Assembly imposed upon them. Even McComb files his bill upon the assumption that their obedience was a duty, and that he must put restraint on them. And but for the loss of confidence in the cause we suppose the mask would not have been laid aside in this Court. The endorsement on the appellee's brief is quite significant of the schemes of these parties.

We cannot consent to reply to the brief as one filed by the State or for the State. We have no objection to deal with it as the brief of the brotherhood, of McComb, Kellogg Clinton, *et id omne genus.* We understand all of them to maintain that McComb or any holder of a consolidated bond, may come before the Circuit Court of the United States and contest with the General Assembly, whether a claim it has acknowledged to be valid and just is valid, and obtain a review of its judgment

And that on such a suit the Circuit Court may perpetually injoin the execution of the settlement. We understand that the General Assembly cannot direct or control the Board of Liquidation in the recognition or payment of debts with the bond mentioned in the Act, but the Board of Liquidation is Lord of all, in their own opinion.

Whence came the authority for all of this?

We are told in a clause of the Constitutional Amendment.

What is that amendment? For three years the powers that be in Louisiana have held office by a disputed and precarious tenure. No one could put confidence in any Act of theirs pledging the faith of the State.

In order to give credit to these bonds, the Constitution was amended. The amendment affirms the bonds to be a valid issue, and to make a contract which shall not be impaired. The people accredit this government to the extent of recognizing these bonds. It is quite a habit in Louisiana for a judge to grant an injunction upon the Auditor of the State in the name of the State, to restrain him from paying interest or principal upon a series of State bonds—not a bondholder being a party or apprized of the suit. So too there is no difficulty in procuring injunctions to hinder collection of taxes. The amendment deals with these classes of disorderly and anarchical Acts to prohibit them. No part of that amendment affirms a principle to sanction this suit, or the pretensions of the plaintiff.

The Funding Act is an undigested and loosely drawn enactment, but its import is intelligible. The main feature consists in a reduction of the entire public debt by an exchange of consolidated bonds at a particular rate. The security to the creditor consists in the adoption of these bonds by the people; for the issues under Warmoth and of Kellogg were open to animadversion in the aggregate and the particular.

There were provisions for the payment of principal and interest, and such restraints were imposed on the officers of the

State in dealing with the funds pledged, as to afford a sort of security to the bondholder that his money would reach him.

It was in the mind of the General Assembly to fund all of the debt, and the Board of Liquidation was empowered to commence their work with funding bonds and warrants.

The powers of the General Assembly to repeal this Act were retained. The General Assembly could not divest a vested right nor impair the obligation of a contract, but the contract with the accepting bondholder is contained in the bond and the securities for the bond.

There is no contract with the bondholder that there shall be no funding of the floating debt, nor that there shall be no change of the persons who compose, or in the powers granted, to the Board of Liquidation.

The Board of Liquidation is a mere agency with special and ilmited powers and cannot transcend those powers. Such is the decision in the Citizens' Bank Case, and such we have contended it to be. We never supposed a brief for the members of this Board was a brief for the State.

The Legislature added to its powers and its duties by the act of 2d March, 1875, and the opposition of the Board to that act only proves their want of faith and duty.

We refer to the brief we have filed in this cause, and submit it to the Court.

JOHN A. CAMPBELL,
For Appellant.

Supreme Court of the U. S.

No. 609.

THE BOARD OF LIQUIDATION OF THE STATE OF LOUISIANA,
WM. P. KELLOGG, ET ALS, MEMBERS OF SAID BOARD,
AND
THE LOUISIANA LEVEE COMPANY, APPELLANTS,

vs.

HENRY S. McCOMB, APPELLEE.

(AFFIDAVIT.)

Personally appeared the undersigned who being duly sworn deposes and says, that on the 5th day of March 1875, he was handed by A. P. Field, the Attorney General of the State of Louisiana, the notice of application for injunction filed herein on March 6th, 1875, and which had been served on Hon. W. P. Kellogg, President of the Board of Liquidation on the 3d day of March, 1875, as found in printed transcript of Record, pages 4 and 5, and requested by him to appear for and represent said Board of Liquidation in said suit and application for an injunction and to coöperate with the co-defendant, the Louisiana Levee Company in defending said suit, and was given to understand that said application for an injunction was to be resisted, so that the said

Board of Liquidation could be left free to act in the premises as it should think just and proper; That in accordance with said request and representations, he consulted with the solicitors of the said Louisiana Levee Company and joined with them in the demurrer filed in this suit, pp. 8 and 9 of the printed Record, and prepared and filed the demurrer on behalf of the said Board of Liquidation found on pp. 11 and 12 of the printed Record, which demurrer was sworn to by C. C. Antoine, then understood to be the acting President of said Board, as found on p. 12 of said printed Record, and which was supposed and understood to be with the consent and approval of said Board of Liquidation; That affiant proceeded to act thereafter as the attorney and solicitor of said Board, as shown by the printed Record, and his acts and doings he was and is convinced were known to and approved by said Board, and the results of such action was noticed in the newspapers of the day in New Orleans; and no complaint or dissatisfaction of his course was ever manifested or made known to him by any member of said Board of Liquidation or by the Attorney General until October, 1875, when he was informed by the said W. P. Kellogg, that the decree in his opinion ought to be acquiesced in; That he sent the bond for appeal found on pp. 13 and 14 of the printed Record to C. C. Antoine, then acting President of the Board of Liquidation, who signed and returned the same, as found in printed Record pp. 13 and 14, and was supposed to have approved the same—and affiant has never had notice of his discharge.

J. Q. A. FELLOWS.

Sworn to and subscribed before me,
this 21st day of December, A. D. 1875,

CHAS. S. RICE,
U. S. Comm'r Dist. of La.

Supreme Court of the U. S.

No. 609.

THE BOARD OF LIQUIDATION OF THE STATE OF LOUISIANA, &c., ET AL, APPELLANTS,

vs.

HENRY S. McCOMB, APPELLEE.

BRIEF ON BEHALF OF C. C. ANTOINE, APPELLANT.

I.—The General Assembly of Louisiana in Act No. 24, approved March 2nd, 1875, relative to the claim of the Louisiana Levee Co., acted within the scope of its authority, violated no contract, and its action is not subject to revision by the courts. The power exercised by it in this regard, belongs solely to the State, and is vested by the constitution in the Legislature.

II.—That the Board of Liquidation is only an agency of the State, and, in the interpretation of the law, have no other function to perform than to administer the law as and according to the rules laid down for their action by the Legislature.—They are subject to Legislative direction.

III.—To the extent shown by the affidavit annexed, C. C. Antoine, one of the members of the Board of Liquidation and its President during the absence of the Governor or his ability to act, and the Board itself, was represented in these proceedings and authorized the appeal taken in this case.

J. Q. A. FELLOWS,

Att'y and Solicitor.

Supreme Court of the United States.

No. 609.

THE BOARD OF LIQUIDATION OF THE STATE OF LOUISIANA, W. P. KELLOGG ET AL., MEMBERS OF SAID BOARD, AND THE LOUISIANA LEVEE COMPANY, Appellants.

vs.

HENRY S. McCOMB, Appellee.

Brief of the State of Louisiana and of H. S. McComb, Appellee.

ON THE MOTION TO DISMISS THE APPEAL.

THOMAS J. SEMMES,
ROBERT MOTT,
of Counsel.

Supreme Court of the United States.

No. 609.

THE BOARD OF LIQUIDATION OF THE STATE OF LOUISIANA, W. P. KELLOGG ET AL., MEMBERS OF SAID BOARD, AND THE LOUISIANA LEVEE COMPANY, Appellants.

vs.

HENRY S. McCOMB, Appellee.

Brief of the State of Louisiana and of H. S. McComb, Appellee.

ON THE MOTION TO DISMISS THE APPEAL.

It is evident from an inspection of the record, that no appeal was prosecuted from the decree of the Circuit Court by the Board of Liquidation or by the members thereof; they are not mentioned in the motion for the appeal, p. 13 of printed transcript, nor are they parties to the appeal bond, pp. 13 and 14, for the signature of C. C. Antoine for that board is not the signature of the board, nor does it make proof of itself that it was the action of the board.

The members of the board were severally cited, and no citation was addressed to the board as an entirety, or a corporation, and each of the members of the board was injoined by the Circuit Court, because the board was not a corporation, but a body of men, empowered to perform certain acts on the part of the State, and as such no one member of the board was

authorized to represent the board without being specially authorized thereto; and in this case, no such authority is pretended to have been given to Antoine.

We beg leave to refer to the affidavits of the Governor and of other members of the board, to establish the fact that the appeal taken in the name of the Board of Liquidation was taken without authority. All the parties must be cited. Bacon vs. Hart, 1 Black 38. The Protector, 11 Wallace 86. The appeal by motion dispenses with citation, but it must be so taken, that those who are not appellants are appellees, otherwise this court would be called on to decree as to the rights of parties not before it, which would be doing a vain thing. Such is the case in the present instance. The Board of Liquidation appears as an appellant, yet the members of that Board swear that they did not appeal, and that the Board did not appeal, and did not know that an appeal had been taken from the decree rendered against them; they are not in fact before the court, for they are neither appellants nor appellees. See motion of appeal, page 13.

Respectfully submitted,

THOMAS J. SEMMES,
ROBERT MOTT,
Of Counsel.

Supreme Court of the United States.

No. 609.

BOARD OF LIQUIDATION ET AL., Appellants,

vs.

HENRY S. McCOMB, Appellee.

Brief of the State of Louisiana, which appears by counsel to aid the appellee, and ask for the affirmance of the decree of the court below, and of Henry S. McComb, Appellee—the same being filed subject to the motions to dismiss the appeal in this case, the right to maintain the motions to dismiss being specially reserved.

THOMAS J. SEMMES,
ROBERT MOTT,
of Counsel.

Supreme Court of the United States.

No. 609.

BOARD OF LIQUIDATION ET AL., Appellants,

vs.

HENRY S. McCOMB, Appellee.

Brief of the State of Louisiana, which appears by counsel to aid the appellee, and ask for the affirmance of the decree of the court below, and of Henry S. McComb, Appellee—the same being filed subject to the motions to dismiss the appeal in this case, the right to maintain the motions to dismiss being specially reserved.

The statement of the case by the counsel of the appellant being substantially correct, and copies of acts and the constitutional amendment having been printed as an appendix to his brief, we can enter directly upon the argument of the case.

While it is true, as a general proposition, that the Legislature of a State has the right to contract debts and provide for their payment, it is not true in regard to the State of Louisiana, for the constitutional amendment, adopted in November, 1870, is in these words:

"Prior to the first day of January, one thousand eight hundred and ninety, the debt of the State shall not be so increased as to exceed twenty-five millions of dollars."

This provision of the constitution has had judicial sanction, and the limit declared to have been reached, and exceeded. See State ex rel. Howe vs. Clinton, 27 An. 41; State ex rel. Citizens' Bank, Board of Liquidation, not yet reported, certified copy of which is filed with this brief, and a printed copy appended hereto.

Such being the case, the Legislature was not authorized to create a debt, by direct legislation, nor could it by the recognition of a claim against the State, violate the spirit of the constitution, after its adoption; but admitting, for the sake of the argument, that the power existed in the State to acknowledge a debt, yet, it could not do so to the injury or defeat of vested rights.

The constitutional amendment, adopted in 1874, is plain and explicit: "The issue of consolidated bonds, authorized by the General Assembly of the State at its regular session. in the year 1874, is hereby declared to create a valid contract between the State and each, and every holder of said bonds, which the State shall by no means and in no wise impair. The said bonds shall be a valid obligation of the State in favor of any holder thereof." See amendment at page 29 of appellants' brief.

II.

The questions to be considered in this case are:

Can the State of Louisiana enter into a contract with her creditors, that is binding on her? Has she entered into such a contract; and if she has, can one of those creditors invoke for his protection, the stip-

ulations of such contract, and have them enforced through the courts?

We think all these questions have been answered in the affirmative.

First—The constitutional amendment gave the power to contract with the creditors of the State on condition, that if they or certain classes of them, would abate a portion of their debts, the State would issue bonds, to the extent of fifteen millions of dollars, that being sixty per cent. of the twenty-five millions to which the debt was restricted by the constitution itself, and that no other bonds should be issued, and no other debts contracted before 1914.

Second—The State has contracted with the holders of its consolidated bonds, by the passage of the act approved twenty-fourth January, 1874, printed copy of which is appended to appellants' brief, wherein it is set forth, that for the purpose of consolidating and reducing the floating and bonded debt of the State, the Governor et al., composing the Board of Liquidation are authorized to cause to be prepared, and to issue bonds "to the amount of fifteen millions of dollars."

SEC. 3. "Said bonds shall be exchanged by the Board of Liquidation for all valid outstanding bonds of the State, and all valid warrants drawn previous to the passage of this act," "at the rate of sixty cents in consolidated bonds for one dollar in outstanding bonds and all valid warrants."

SEC. 5. "That the consolidated bonds herein authorized shall be held and used by said Board of Liqui-

dation *only for the purpose of exchange, as aforesaid; and said bonds shall be used for no other purpose or purposes than as authorized by this act.*"

SEC. 11. "That each provision of this act shall be and is hereby declared *to be a contract between the State of Louisiana and each and every holder of the bonds* issued under this act."

SEC. 13. "That the entire State debt, prior to the year of our Lord, 1914, shall never be increased, directly or indirectly, beyond the sum of fifteen millions of dollars hereby authorized, it being the intent and object of this act, *and of the exchanges to be effected thereunder to reduce and restrict the whole indebtedness of the State to a sum of not exceeding fifteen millions of dollars, and to agree with the holders of the consolidated bonds, to be issued hereunder, that said indebtedness shall not be increased beyond said sum during said period.*"

Third—The contract being clearly ascertained, and the appellee being a holder of some of these consolidated bonds, we will show that the law has given him the right to have the stipulations of the contract enforced.

When a power to issue bonds for the purpose of paying debts was coupled with a prohibition from issuing bonds, except for the payment of the bonded debt of a city, it was held, that when the arrangement was accepted by the creditors of said city, and new bonds were issued, this provision of the law was a material element of the new contract, and could not be subject to legislative repeal or amendment to im-

pair or diminish the security of the creditors, and the holder of *one* of said bonds was entitled to an injunction restraining the issue of additional bonds. Smith vs. The City of Appleton, 19 Wis. 468; People vs. Woods, 7 Cal. 579; People vs. Bond, 10 Cal. 563; Thornton vs. Hooper, 14 Cal 9; Brooklyn C. R. R. vs. Brooklyn R. R. Co., 32 Barbour, 358; Steudel vs. Mil. and Miss. R. R. Co., 12 Wis. 73; Smith vs. Cleveland, 17 Wis. 567, 568–9.

Where a municipal corporation was authorized to issue bonds and exercise power of local taxation to pay them, and persons have bought such bonds, subsequent legislation which repeals or restricts such power of taxation is void. Van Hoffman vs. City of Quincy, 4 Wallace 535; State vs. Saline Co., 51 Mo. 365.

Every valuable privilege given by a charter, and which conduced to an acceptance of it, and an organization under it, is a contract that can not be changed by the Legislature. State Bank of Ohio vs. Knoop, 16 How. 380; Ohio Life Ins. Co. vs. Debott, 16 How. 432; Jefferson Br. Bank vs. Skelly, 1 Black 436; Woodruff vs. Trapnell, 10 How. 191.

It was a trust on which the bondholders, when made acquainted with it, had a right to rely; they became, if they assented to it, *cestries que trust*, with vested rights. Barings vs. Dabrey, 19 Wallace, 8, 9.

The Supreme Court of Louisiana has decided that the contract was valid, and no other debt could be created. See State ex rel. Citizens' Bank vs. Board of Liquidation, printed herewith in the appendix.

The action of the Legislature in recognizing a debt to be due the Levee Company, and in providing for its audit, and satisfaction in consolidated bonds, was an attempt to impair the vested right of appellee, who was entitled by the contract to have the bonds exclusively applied, according to contract, to the character of debt specified in it, viz, to outstanding bonds and valid warrants already issued.

If an act is threatened, the direct and necessary tendency of which is to deprive the creditors of their security, to an extent that will hazard the realization of their demand, the law will afford a preventive remedy. Roosvelt vs. Draper, 23 N. Y. 330.

If the State can, by a recognition of a debt to the Levee Company, apply consolidated bonds to its satisfaction to the extent of one and three-quarter millions, it can recognize other debts and apply consolidated bonds to their satisfaction, and thus defeat the constitution and the law; because if it can be done to one amount it can to another, and the fifteen millions of dollars may thus be applied to purposes not intended by the act; and instead of the debt being restricted to that amount, it would be increased; the fifteen millions of dollars of bonds would be gone, and the outstanding bonds and warrants contemplated to be funded at sixty cents on the dollar would still be outstanding against the State, and as the act of the State of 1875 indicates an intention to violate our vested rights, we can invoke the power of the United States courts to protect us, for it is clear that an action will lie against State officers in those courts to restrain

them from acts injurious to the plaintiffs, if the citizenship of the parties confers jurisdiction. Osborn vs. Bk. of U. S., 9 Wheaton 738; Woolsy vs. Dodge, 6 McLean 142; Woolsy vs. Dodge, 18 Howard 331; Davis vs. Grey, 16 Wallace 302.

Courts of equity will interfere to prevent public officers from exercising a void authority. People vs. Canal Board, 55 N. Y. 391; Doolittle vs. Supervisors 18 N. Y. 163; and where the directors of a bank refused to take necessary steps to protect it against illegal tax, a stockholder's bill in equity was maintained. Dodge vs. Woolsy, 18 How. 331; Mechanics' and Traders' Bank vs. Debott, 18 How. 380; Curren vs. State of Arkansas, 15 How. 309.

Fifth—The appellee had the right to expect, that the members of the Board of Liquidation, as State officers, would enforce a State law; hence the necessity of exercising the right vested in him to invoke the restraint of an injunction, to prevent the wrong that would be inflicted on him, by an unlawful issue of consolidated bonds in violation of the contract made by the State with its creditors, who accepted the terms of compromise, contained in the constitution and the act of 1874, and sixty per cent. of their bonds and warrants. Orsborn vs. Bank of United States, 9 Wheaton 840; Smith vs. City of Appleton, 19 Wis. 468.

Had he neglected to act, the probability is that the Board of Liquidation would have issued consolidated bonds to the amount of one million seven hundred and fifty thousand dollars, in violation of his vested

rights, thus recognizing the right of the State, notwithstanding its contract to the contrary, to appropriate the fifteen millions of consolidated bonds, to purposes not contemplated at the time of their creation, and in violation of the terms stipulated between the contracting parties.

In a case, in December, 1875, where the Governor employed special counsel, after the adoption of these constitutional amendments, and the passage of the act of 1874, and valuable services were rendered to the State, the Supreme Court of Louisiana decided that no debt was created, the constitutional limit having been reached, and the faith of the State pledged, that no more debt should be created until the year 1914. Ex rel. Howe, 27 An. 41; ex rel. Citizens' Bank vs. Board of Liquidation, not yet reported, certified copy furnished and printed in appendix; and the Supreme Court of the State having interpreted a statute, the Supreme Court of the United States is bound by that interpretation. Leffinwell vs. Warren, 2 Black 603; Snydam vs. Williams, 24 How. 427.

III.

The demurrer admits the averments of the bill to be true. One of the averments of the bill is that the State is in no manner indebted to the Levee Company; that in consideration of services to be performed by the said company, as specified in the act approved twentieth February, 1871, copy of which is appended to this brief, the State agreed to levy and collect annually a certain tax, the proceeds of which,

when collected, were to be paid by the treasurer to the Levee Company ; and that the State has complied with its engagement, and levied the tax ; and if the officers of the State have wrongfully withheld from that company any portion of the taxes collected by them, the State is not responsible to the Levee Company for the unauthorized conduct of its officers; and that the State can not create a debt and cause it to be paid in the bonds destined by law and contract to satisfy the outstanding bonds and warrants in existence when the contract was made, viz, all outstanding bonds and valid warrants issued by the Auditors previous to the twenty-fourth January, 1874.

If the appellants had a claim it was against the Auditor and Treasurer for the misappropriation of the taxes collected for them, and not against the State, which had complied with its contract to levy and collect a tax.

The attempt to pay the Levee Company in full, when the actual and bona fide creditors of the State were compelled to accept sixty cents on the dollar, was the attempt to perpetrate a wrong upon those creditors of the State of whom appellee is one, and an unlawful effort to absorb and divert the bonds authorized by the act of 1874 to be issued in settlement of the then existing bonds and warrants, and leave nothing for the holders of the bonds and warrants provided for in the act of 1874. This would defeat the policy of the State and the arrangement made with the bondholders who were induced to accept the provisions of the act of 1874 in the expecta-

tion that all the old bonds would be exchanged for the new consols, and the treasury be relieved from floating debt by the funding of the outstanding warrants, and thus the State would be enabled to conduct its operations on a cash basis.

Respectfully submitted,

THOMAS J. SEMMES,
ROBERT MOTT,
of Counsel.

APPENDIX.

No. 4.

AN ACT

Relative to the Louisiana Levee Company, a corporation organized under the general laws of this State, constituting it a body politic and corporate, with certain powers, privileges and franchises, and contracting with said corporation for the construction, maintenance and repairs of certain levees, and providing for compensation therefor.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened,* That the Louisiana Levee Company, a corporation organized under the general laws of the State, by notarial act passed on the eleventh day of February, in the year one thousand, eight hundred and seventy-one, before P. Charles Cuvillier, a notary public in the city of New Orleans, and recorded in the office of Mortgages in the parish of Orleans, on the eleventh day of February, one thousand, eight hundred and seventy-one, in book society 8, 247, 248 and 249 folios, is hereby recognized and approved as a body politic and corporate, with all the powers, privileges, rights and franchises specified in said notarial act, hereby adopting, confirming and approving all the provisions of said notarial act, and making the same a part of this act, as follows:

UNITED STATES OF AMERICA,

STATE OF LOUISIANA, CITY OF NEW ORLEANS.

Before me, P. Charles Cuvillier, notary public, in and for this city and parish of Orleans, duly commissioned and sworn, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the persons whose names are subscribed hereto, who severally declared, that availing themselves of the provisions of the laws of the State of Louisiana relative to the organization of corporations in said State, they have covenanted and agreed, and by these presents do covenant and bind themselves and those whom they represent, and those whom they may hereafter

join and associate with themselves, to form themselves into and constitute a corporation for the objects and under the articles and stipulations following, to wit:

ARTICLE FIRST.

The name and style of the corporation shall be "The Louisiana Levee Company," and the place chosen for its domicile is the city of New Orleans, in the State of Louisiana.

ARTICLE SECOND.

The object and purpose of the company are declared to be the reclamation and protection from overflow of the alluvial lands in the State of Louisiana, and to enable the said company to accomplish said purposes and objects, it shall have power—

1. To contract with the State of Louisiana, and under such contract to locate, construct, build and own, maintain, control and use levees on both banks of the river Mississippi and of such tributaries and outlets of the same, as may be deemed necessary by a commission of competent engineers, appointed as may be so agreed upon in said contract.

2. To construct, establish or purchase, and thereafter to own, maintain and operate all lines of telegraph, railroads, steamboats, and such other machinery as may contribute to the above expressed and all other purposes and objects of the company.

3. To obtain, acquire and receive, by contract, purchase, grant, gift, devise or bequest, and to have and to hold real and personal estate and all such lands, tenements and hereditaments, as shall contribute to secure the accomplishment of the objects and purposes of the company.

4. To accept and exercise all such powers, privileges and franchises as may hereafter be granted to, or conferred upon the said company by the government of the United States, or of any of the States interested in the construction and maintenance of levees on the banks of the river Mississippi, or its tributaries or outlets, and further to consolidate with any company chartered in any of the said States or by the United States for the same or like purposes.

ARTICLE THIRD.

The president of the company is designated as the officer on whom citation may be served.

ARTICLE FOURTH.

The capital stock of the company shall be one million dollars, represented by one hundred thousand shares of ten dollars each, provided, however, that the directors are authorized and required to increase the capital stock to one million five hundred thousand dollars, by issuing one hundred thousand shares of preferred stock of fifteen dollars per share, payable only in the following manner, to wit: Ten dollars per share in the existing stock of the company, to be designated thereafter as "ordinary stock," the balance (five dollars) to be paid in lawful currency at such time and in such manner as the board may determine, provided further that the right of subscribers to the preferred stock to pay ten dollars per share in certificates of ordinary stock shall cease at the expiration of six months from the date of the adoption of this article. Said preferred stock shall be entitled out of the earnings of the company to dividends to the extent of twenty per cent. per annum of said earnings before the ordinary stock shall participate therein.

No increase of the capital stock of the company shall hereafter be made, except in the dividends of stock to the stockholders, and the capital stock of the company shall never be increased beyond five million dollars.

ARTICLE FIFTH.

On the first Saturday in April, in the year one thousand eight hundred and seventy-two, and thereafter, on the first Saturday in April in each and every year, an election of directors by the stockholders shall be held at the office of the corporation, of which election previous notice of at least ten days shall be given by advertisements in two newspapers published in the city of New Orleans.

Said election shall be by ballot, each share shall be entitled to one vote in person or by proxy, and a majority of votes shall decide the election. No person shall hold the office of director who is not a resident of this State, and the owner of at least one hundred shares of the stock of the company.

ARTICLE SIXTH.

Upon this corporation going into operation, the subscribers to this act shall meet and select from their own number a board of directors, who shall hold over until the first general election, to be held in the year 1872, as above provided.

ARTICLE SEVENTH.

All the corporate powers of the company shall be vested in the Board of Directors, appointed and to be elected as provided herein. The said board shall elect a President, and also a Vice-President, who shall exercise the powers of the President in case of the absence or inability from any other cause of the latter to act, and all such other officers, clerks and agents as shall be necessary to carry out the purposes of the company.

They shall fix the salaries and the amount of security to be furnished by, and required from each. All officers, except the President, and all subordinate employes or agents of the company shall be removable at the pleasure of the board.

A majority of the board shall form a quorum, and the decision of a majority of these shall constitute a valid corporate act.

They shall have the power to make by-laws, rules and regulations, or to alter, amend or repeal the same whenever they shall deem it expedient for the interests of the company.

They may provide a seal, with such device and motto as may be agreed on by them. Vacancies may be declared on account of death or resignation, and such vacancies for the period intervening between their occurrence and the next general election shall be filled by election of the board.

The board shall have full power, and are hereby authorized to buy and to sell, to mortgage and to pledge such real or personal property as may be necessary for the use and purposes of the company, and to borrow money by an issue of the bonds of the company or otherwise, to an amount not exceeding the actual capital stock of the company. The number of directors shall be determined by the by-laws, and shall not be less than nine, nor more than fifteen. After the first election, no increase in the number of members constituting the Board of Directors shall take effect until after the general election to follow.

ARTICLE EIGHTH.

A failure from any cause to elect Directors on the day named for that purpose, shall not dissolve the company, but the directors then in office shall hold over until another election be held, of which notice shall be forthwith given as provided for in the case of regular elections, and continued until an election be held.

ARTICLE NINTH.

At a general meeting, convened for that purpose, and of which notice by publication, as in the case of general elections, shall be given for at least twenty days, the stockholders may make any modifications, additions or changes in these articles, with the assent of a majority of all the capital stock of the corporation. On all matters submitted to the vote of the stockholders, they shall be entitled to one vote for each share held by them respectively, and to cast the same in person or by proxy.

ARTICLE TENTH.

Under no circumstances shall any stockholder be liable for the debts or losses of the company, beyond the amount due on his subscription.

ARTICLE ELEVENTH.

This corporation shall go into operation as soon as one thousand shares of its capital stock are subscribed for, and these articles are recorded as required by the laws of this State. It shall have and enjoy succession by its corporate name, for the period of twẽny-five years from the date of said recording, and for such longer time as may be allowed by generel or special law, unless sooner dissolved as hereinbefore provided.

ARTICLE TWELFTH.

The liquidation of the affairs of the company shall be made by three commissioners, elected by the stockholders at the time designated for the last general election of directors, or if a liquidation should be resolved on previous to said time, then the said commissioners shall be elected at a general meeting, specially convened

after thirty days' previous notice, in the manner required for regular elections. Said commissioners shall have the same qualifications required by the charter or by-laws for directors ; their salary and term of office shall be determined previous to their election, by the general meeting of stockholders, and they shall by the fact of election, be vested with all the powers necessary to collect and dispose of the assets of the company, and its property, to settle its liabilities, and to distribute the surplus *pro rata*, among its stockholders.

ARTICLE THIRTEENTH.

The names of the stockholders, their residences and the amount of stock taken by each, are hereby declared to be for the present, such as are subscribed to this act, and each of the incorporators in this act shall have the preferred right at any time the books of subscription shall be opened, to subscribe for a number of shares not in excess of one twenty-seventh part of the number of shares for which to books of subscription shall be opened.

This done and passed at my office, at the said city of New Orleans, in the presence of Martin L. Ainsworth and George Martin, witnesses of lawful age and domiciliated in this city, who hereunto sign their names, together with the said appearers and me the said notary, on this eleventh day of February, in the year of our Lord, 1871.

Original. (Signed,)

M. L. AINSWORTH,
GEO. MARTIN,
Witnesses.
M. A. BRYSON,
F. X. BARBOT,
JOHN N. BOFINGER,
C. T. HOWARD,
JAS. S. CLARKE,
And others, their associates.
P. CHAS. CUVELLIER Notary.

SEC. 2. *Be it further enacted, etc.*, That for the purpose of providing and maintaining proper and efficient levees throughout all the portion of the State watered by the Mississippi river and the rivers, streams and bayous running into and from the same, and to protect

the inhabitants from inundations, the State of Louisiana contracts and agrees with the said Louisiana Levee Company in terms as follows:

1. That in order to maintain a uniform and perfect system, the location and dimension of all levees to be contracted, maintained, repaired, and kept in repair and managed, shall be determined by a commission of three engineers, to be appointed as follows, to wit: One by the Governor of the State of Louisiana, who is hereby authorized and directed to appoint said engineer within thirty days after the acceptance of the terms of this act by the said company, as hereinafter provided; one by the Louisiana Levee Company, and one by the government of the United States. It shall be the duty of said commission, and they are hereby directed to determine the proper location and deminsions of all levees to be constructed, repaired or strengthened by said corporation, and the standard of demensions to which they shall be maintained by said company, and to report the same with maps and profiles thereof, and the number of cubic yards to be built in the construction of new levees, and in strengthening, enlarging and repairing the levees now in existence, to the Secretary of War, the Governor of the State and the president of said company, ~~They shall also, on or before the first day of October in each year, prepare a report,~~ which report shall be made on sections of five miles or more of said levees. Any two members of said commission shall be competent to perform the duties imposed upon said commission, and their decision shall be sufficient, and shall be accepted and taken as and for the decision of said commision; provided that the neglect, failure or refusal of the government of the United States, or of the Governor of this State, to appoint a member of said commission as aforesaid, shall not in any respect invalidate or annul this agreement. And the said commission and the members of it, are, and each of them is vested with all and every power, authority and right requisite and necessary for the discharge of said duties.

2. That the said Louisiana Levee Company, for and in consideration of the compensation, benefits, rights and powers hereinafter stated, shall take charge of, manage, control, construct, maintain, repair and keep in repair, all the levees in this State on the Missis-

sippi river, its tributaries and outlets, and such levees in the State of Arkansas as may be necessary to protect any of the lands of this State from overflow by the waters of the Mississippi or Arkansas river; provided, however, that the consent of the State of Arkansas, be first had and obtained to the building, constructing, maintenance, management and repairing of said levees in said last mentioned State.

3. That for the purpose of carrying out the provisions of the preceding article, the said Louisiana Levee Company is hereby vested with the sole and exclusive custody, management and control of all the levees of this State, for the period of twenty-one years from the day when this act shall take effect. Said corporation shall have full right and authority at all times to enter upon and occupy, as far as may be necessary, by their surveyors or engineers, contractors, agents and servants, together with all necessary carts, animals, tools, materials and equipments, all such lands as may be necessary, and to remain as long as may be neceseary for the purpose of doing and performing all and singular, the matters and things required to be done and performed in and about the inspecting, building, construction, maintenance, repairing or management of the levees as aforesaid, and to take, free of cost, from said lands, stone, gravel, earth and timber as the same [may] be necessary for the purpose aforesaid, with full right of way, and the right and power to use and occupy a sufficient portion of land—without remuneration to the owner or occupant thereof—for the purpose of locating, erecting, constructing, repairing and extending said levees; and the said corporation shall have all the rights, powers and prerogatives, with respect to the location, construction, maintenance and management of said levees, as are now vested by law in the State, parish or municipal authorities; provided, however, that said corporation shall have no power to lay, assess or impose any tax, impost, fine or penalty whatsoever, nor to compel the owner or occupants of land to construct or keep in repair any levee or parts of the same, or to contribute to the same.

4. That said corporation shall, within sixty days from the receipt of the report of said commission, commence the construction of said levees, and shall thereafter construct not less than the number of cubic yards in each year required by the estimate of said commis-

sion, until the whole shall be completed according to the standard required by their final report.

5. That on and after the completion of any and all sections of said levees said company shall maintain the same up to the standard dimensions required by the report of said commission; and in the event of said corporation failing or neglecting to do so, it shall be liable in damages to any person or persons injured by reason of said neglect or failure; provided, that said corporation shall in no case be liable where such injury shall be caused by, or said failure shall result from, acts of violence of men, the wrongful acts of individuals, the existence of obstacles interposed by the action of courts, or the operation of causes over which said company can have no control, or on account of the floods rising above the standard height determined by said commission.

6. That the Auditor of Public Accounts shall be required to pay to the Louisiana Levee Company, at the rate of fifty cents per cubic yard, for all levees constructed by said company after the first day of October, 1873, and for which certificates shall be issued according to law. And said Auditor shall annually levy and cause to be collected, in the same manner and by the same officers as the ordinary taxes of the State are collected, a sum sufficient to cover the cost of all levees required to be built by the commission of engineers in their annual report, with twenty per cent. additional, to provide for deficiencies of collections. Said tax, when collected, shall be paid over to the Treasurer of the State, and shall be set apart as a special fund, to be known as the "levee construction fund," which shall not be used for any other purpose than as compensation to said Louisiana Levee Company; and said fund shall be paid on the order of the president of said company to the treasurer thereof; provided, that any surplus moneys derived from the tax collected in any year, shall be placed to the credit of said fund for the year next succeeding; and provided, further, that all levees constructed by said company before the first day of October, 1873, shall be paid for by the State at the rate of sixty cents per cubic yard, as the existing contract and laws provide.

7. That the Auditor of the State shall cause to be assessed and collected, annually, for the period of twenty-one years from and after

the passage of this act, two-tenths of one per centum upon the assessed value of the taxable property within the State, to be set apart and known as the "levee repair fund," which said fund shall be collected at the same time, in the same manner, and by the same officers as the ordinary taxes of the State are collected, and shall be used for no other purpose than as provided. Said fund shall be paid over to the treasurer of said company, upon the order of the president thereof, by the Treasurer of the State, as compensation to said company for maintaining said levees in good and efficient repair, according to the standard as hereinbefore provided.

8. That said company shall have full right, power and authority to mortgage said funds, and to transfer, by proper instruments in writing, the power of receiving the same, or any portion thereof, to any person or persons, and the Treasurer of the State, upon presentation to him of such instrument of transfer, shall pay from said funds such portion or portions to the person or persons so authorized to receive them ; provided, however, that if the said company shall issue its coupon bonds, and shall so direct, all bonds so issued by this company shall be registered in the office of [Auditor of] Public [Accounts] and State Treasurer ; and such registry shall be indorsed thereon, and the coupons thereto attached shall be stamped across their face by the Treasurer, with a fac simile of his signature ; that to secure the prompt payment of principal and interest of such bonds as may be issued by this company, a sufficient amount of the revenues accruing under the provissions of this act are hereby pledged, and after the issuance of any bonds by this company, it shall be the duty of the State Treasurer to withhold from any funds in the State treasury to the credit of said company, an amount sufficient to pay all the interest coupons upon bonds so issued, falling due wtthin six months, which coupons he shall pay from the sum so withheld at the time and place so designated on said coupons ; and a sum equal to a per cent. of the principal of the said bond so issued shall also be retained by the State Treasurer, which sum shall be sufficient only to fully retire the bonds at their maturity. The State Treasurer shall annually advertise for a period of thirty days in the official paper of the State, and in at least one daily paper in the city of New York, for sealed proposals for the sale to said Treasurer, of an amount

of said bonds sufficient to absorb the aforesaid accumulated sinking fund of the year. On the first Monday after the expiration of said publication, he shall open said bids in his office in the presence of the Auditor of Public Accounts and the president of the company, and the awards shall be made to the lowest bidder; provided, that no bids shall be accepted for more than the face of the bonds. If there should be no offer of said bonds at par or less, it shall be the duty of the treasurer, under the advice of the Auditor of Public Accounts and the president of this company, to invest said funds in the bonds of this State or of the United States, for the benefit of the company, and hold the same as a portion of the sinking fund for the retirement of the bonds issued by this company. In his annual report to the General Assembly, the treasurer shall give a full statement of any proceedings had by him under this act, and it shall be the duty of the State Treasurer, at the first of each month, to communicate to the president of this company a statement of the amounts received during the past month, and the disposition thereof.

9. That whereas, no tax, as provided herein, can be levied and collected during the year 1871, the Governor of the State is hereby authorized and required to issue the bonds of the State to this company, to the amount of one million of dollars, said bonds to be delivered to the president of the company upon said company filing with the Secretary of State an acceptance of this act, and a resolution of its directors and incorporators binding itself to perform the obligations of this act. Said bonds shall be of the denomination of one thousand dollars each, shall be signed by the Governor, countersigned by the Secretary of State, and sealed with the seal of the State. They shall be dated on the first day of April, 1871, and shall be payable to the president of the Louisiana Levee Company or bearer. They shall bear interest at the rate of eight per cent. per annum, both principal and interest to be paid in the legal money of the United States at the time when the payments are due; said bonds shall be registered in the books of the Auditor of Public Accounts and of the State Treasurer, and shall have coupons attached thereto, stamped with the fac simile of the signature of the State Treasurer, and payable in New Orleans or New York, at the option of the holder, on the first day of April and October of each year. For the

payment of the principal and interest of the bonds aforesaid, the faith of the State of Louisiana is unconditionally pledged to the holder. To provide for the prompt payment of the principal and interest of said bonds, an annual tax of one-half mill on the dollar shall be levied and collected on all real and personal property in the State subject to taxation, which tax shall be paid into the State treasury, and shall be placed to the credit of a special fund to be entitled "the Louisiana levee bond fund," which fund shall be applied first to the payment of the coupons of said bonds, as the same shall fall due, and any excess thereafter shall be applied, annually, to the purchase and retirement of said bonds.

10. That should any officer of this State, fail, neglect or refuse to do any of the matters or things which he shall be required to do by the provisions of this act, said corporation may apply to any court of competent jurisdiction for a writ of mandamus directed to said officer, who shall neglect, fail or refuse to perform said matter or thing as aforesaid, commanding him to do and perform the matter or thing so as aforesaid required of him, and said judge shall therefore issue said mandamus; provided, that said judge may, in his discretion, appoint a special commissioner with full power to do and perform such matter or thing, and to comply with the requirements of such provision of this act, and the actions and proceedings of said commissioner in the premises shall have the same validity and force as if they had been done and performed by the said officer.

SEC. 3. *Be it further enacted, etc.*, That no person shall injoin the collection of said taxes, or any part thereof, or the payment of said funds, or any part thereof, unless he shall present to the judge, to whom he shall apply for such injunction, together with the petition, duly verified, according to law, his obligation in favor of the Louisiana Levee Company, in double the amount of the sum of the tax, or of the payment of said fund, which he seeks to injoin, with the surety of two good and solvent persons, who shall be freeholders; and who shall reside within the jurisdiction of the court; that on the trial of the said injunction, the sureties on the bond shall be considered as parties plaintiff; and in case the injunction be dismissed, the court shall in the same judgment, condemn the plaintiff and sureties, jointly and severally, to pay to said company twice the amount

of the tax or funds injoined as damages; and the sureties in such cases, shall not be allowed to avail themselves of the plea of discussion.

SEC. 4. *Be it further enacted, etc.*, That the Louisiana Levee Company is hereby authorized to consolidate with any other company organized for similar purposes in the States of Mississippi, Tennessee, Arkansas or Missouri, so as to secure, as far as may be, a uniform system of levees throughout the entire section of country liable to overflow by the Mississippi and its tributaries, and to place the same under one control.

SEC. 5. *Be it further enacted, etc.*, That this act shall take effect from and after the acceptance thereof, and the filing of such acceptance in the office of the Secretary of State, by the Louisiana Levee Company; *provided*, the said acceptance shall be made and filed within ninety days from and after the passage of this act.

SEC. 6. *Be it further enacted, etc.*, That all acts and parts of acts inconsistent with this act are hereby repealed.

Signed, GEO. W. CARTER,
Speaker of the House of Representatives.
OSCAR J. DUNN,
Lieutenant Governor and President of the Senate.

Approved February 24, 1871.

Signed, H. C. WARMOTH,
Governor of the State of Louisiana.

A true copy,

GEO. E. BOVEE,
Secretary of State.

SUPREME COURT OF THE STATE OF LOUISIANA.

Clerk's Office, New Orleans, Nov. 29, 1875.

State ex rel. Citizens' Bank of Louisiana,
vs.
The Board of Liquidators. } No. 5892.

Appeal from the Superior District Court, for the parish of Orleans.

Mr. Justice Howell delivered the opinion and decree of the court in the words and figures following, to wit:

This is a proceeding by mandamus to compel the Board of Liquidators to fund a certain promissory note for two hundred thousand dollars with eight per cent. interest, made by the Governor of the State on twenty-seventh February, 1872, under section two of act No. 12 of 1872, and secured by a pledge of forty warrants of five thousand dollars each, issued by the State Auditor under said section; said note, principal and interest being subject, as alleged, to a credit of $120,000, amount of bonds received in exchange for said warrants under act No. 3 of 1874, known as the "funding act."

The defense is that there is no law authorizing the funding of said note, such evidence of the State's obligations not being specified in the third section of the said funding act of the warrants issued for the same debt having been funded by the relator, the entire obligation of the State for the said debt of $200,000 is by the provisions of said act merged in the bonds exchanged therefor; and further, that there is no law authorizing interest to be paid on said debt.

The writ of mandamus can issue only to compel the performance of a ministerial duty, and the question (conceding that the note evidences an existing debt) is, does the law make it the duty of the liquidators to exchange the bonds authorized by act No. 3 of 1874, for anything but the bonds of the State and certain warrants specified in section 3.

A careful reading of the said act constrains us to answer the question in the negative.

Section three of said act is the only part thereof that confers authority to make such exchange, and it designates only "all valid outstanding bonds of the State and all valid warrants drawn previous to the passage of this act by the respective Auditors of Public Accounts of the State on the treasurer thereof, except warrants issued by the Auditor in payment of the constitutional officers of the State, at the rate of sixty cents in consolidated bonds for one dollar in outstanding bonds and all valid warrants." The words "bonds" and "warrants," are here repeated, to leave no doubt as to the object of the law, and the proviso which immediately follows, discloses "that the holder of *bond* or *valid warrant* rejected by a majority of said board may apply by petition to the proper court for relief, and if final judgment shall be rendered in his favor against said board, it shall be the duty of said board to fund his said claim in bonds at the rate provided by this act." Only the holders of outstanding bonds and valid warrants can appeal to the courts for relief. And lest there should be any doubt, section five declares, "that the consoli-

dated bonds herein authorized shall be held and used by said board of liquidation only for the purpose of exchange as aforesaid," that is, for the outstanding bonds and valid warrants.

Sections twelve and thirteen, invoked by the relator, refer to other subjects and not to the duty of funding, and we are not authorized to enlarge the objects and purposes of the act, especially where the language is so clear and explicit. To do so would be legislation on our part. We have only to apply the law as it is in all its provisions, and we must say, that the relator having voluntarily accepted its terms and taken sixty per cent of its whole claim against the State by funding the warrants held by it, the purpose of the act, as to said debt, has been attained, and the whole and only debt of the State due to the relator in this transaction, has been funded and the indebtedness of the State *pro tanto*, has been reduced and restricted, as section thirteen, invoked by relator, declares is the intent and object of the act.

Any other construction of the said act in this case, would give the relator an advantage over other creditors of the State, who may choose to accept the terms of the act.

Judgment affirmed.

A true copy:

JOHN M. HOWELL, Clerk.